



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

A LETTER TO LORD ELLENBOROUGH
FROM LORD THOMAS COCHRANE,
10TH EARL OF DUNDONALD

1815

TRANSFERRED TO
U OF W LIBRARY

E45
D91L

1317

A
LETTER
TO
LORD ELLENBOROUGH
FROM
LORD COCHRANE.

A
LETTER
TO
LORD ELLENBOROUGH

FROM
Thomas
LORD COCHRANE.
10th Earl of Dundonald

No pleasure is comparable to the standing upon the vantage
ground of Truth.

Bacon Lord Verulam.

.....

If JUDGES act wrong, their proceedings ought to be published.—
If the PRESS is to be gagged, God knows where it will end!

Lord Chancellor Manners.

L O N D O N :
SOLD BY T. HUGHES, LUDGATE STREET.

—◆—
Price 5s.

—◆—
1815.

F. G. HANBARD, Printer, 108, Tottenham Court Road, Fleet Street, London.

King's-Bench Prison, Dec. 21, 1814.

MY LORD;

THE ill-judged, but well-intended Motion in the House of Commons, on the subject of one of the three Punishments to which I was condemned, six months ago, under your Lordship's authority, for an offence which was completed before I knew it had been meditated, enabled his Majesty's Ministers to assume to themselves the merit of mercy, for an act for which they must otherwise have been content with the more humble praise of prudence. On their *mercy*, which was preceded by depriving me of my Commission in the Navy, without waiting for the ceremony of my expulsion from Parliament, and followed by a chivalrous game at foot-ball in Westminster Abbey, where the work of degradation was more quietly performed at midnight, than it could have been opposite the Royal Exchange at noon-day, I have only to add, that they kept their clemency in their pockets, until they had exhausted their united eloquence and efforts to persuade the world of the unworthiness of its object.* They did not interpose between me and the Pillory, the receptacle of the most abandoned wretches, until they had exerted their best endeavors to exclude me for ever from more respectable society.—But I intro-

* See the Speeches of Lord Castlereagh, and the Attorney and Solicitor Generals, during the Debate on Lord Ebrington's Motion, July 19th.

duce the subject of *their mercy*, only as it is connected with, and leads me to the consideration of *your Lordship's justice*.

In the course of the unmanly, uncalled for, and unjustifiable discussion which took place on the *merciful* occasion above-mentioned, your Lordship's learned friend, the Attorney-General, is reported to have observed, that "he was glad that the period had arrived" when the *Trial* could be read at length; and thus do "away the effect of those imperfect statements which misled the public mind."* That period, however, did not arrive so soon as public advertisement had given reason to expect; and the cause of this delay is probably to be found in another observation of that learned gentleman, "that it was possible, and not unlikely, that the Short-hand Writer, who took down the Trial, did send it to the learned Judge to be revised by him." The Attorney-General having admitted thus much, and the Short-hand Writer himself having declared, on being applied to by one of my friends for a Copy of the Charge, that it was gone to your Lordship to be revised; your Lordship, I presume, will not deny that the Trial, or at least the *summing up* of the evidence, was actually corrected by your Lordship, preparatory to publication. I am not disposed to question the propriety of your Lordship's conduct in supervising the Notes of the Short-hand Writer in this instance, especially if it be true, as further asserted by the Attorney-General, that it is the common practice so to do. But if the Charge, as it now appears in print, is the same Charge as was actually delivered to the Jury, I have to lament that the Notes of another Short-hand Writer, who was employed by one of the Defendants (Mr. Butt), and whose Report of the Charge was quoted by me in my Defence in the House of Commons, had not the

* *Times*, July 20th.

advantage of a similar revision ; because, in that case, I should not have been reproached by another learned friend of your Lordship's, the Solicitor-General, with having in my Defence misrepresented and misquoted the language used by your Lordship.* The fact is, that having been disappointed of a copy of the Charge, as taken down by Mr. W. B. Gurney, because it was gone to be revised, I was under the necessity of quoting from the Report furnished by the Short-hand Writer employed by Mr. Butt, in which your Lordship is represented to have asserted, that " De Berenger appeared before me " fully blazoned in the costume of his crime ; that he " pulled off his scarlet uniform in my presence ; and that " if the circumstance of its not being green did not excite my suspicion, what did I think of the star and " medallion ?" For these unqualified assertions, and various others of the like purport, which, if believed by the Jury, were sufficient for ~~my conviction, there certainly is not,~~ on the face of the Trial, one particle of evidence : and yet, when I made my Defence in the House, it was impossible for me to doubt that your Lordship had so expressed yourself ; for though I was not present in Court (because my lawyers, for reasons unknown to me, were solicitous that I should not appear), yet many persons who were present assured me, that, according to their understanding of your Lordship, such was the language made use of by you on that occasion, without any qualification whatever. It appears, too, that the same impression was received by the Reporters for the public prints, in which your Lordship was represented to have expressed yourself in the terms of that Report of the Charge from which my quotations in the House of Commons were made.

By the *summing up*, as it now stands in the printed Trial, it appears that your Lordship expressed yourself

* *Times*, July 20th,

somewhat differently, and less positively, on the subject of De Berenger's appearance at my House, than in any other account which I have either heard or read: and since the Trial, as it now appears, had the advantage of being revised by your Lordship; and since the Attorney-General assures us, that it is calculated to do away the effect of all imperfect statements; and as we have the further assurance of the same learned gentleman, founded on his knowledge of the noble and learned persons presiding in the Courts, that there is not a Judge on the Bench capable of wickedly altering his Charge, so as to give it a different colour,* it must needs be inferred, that the Newspaper Reporters, and the Short-hand Writer employed by Mr. Butt, and the several persons present at the Trial, with whom I have conversed on the subject, did, by some unfortunate coincidence, more extraordinary, perhaps, than the alleged concurrence of circumstances which were supposed to justify my conviction, fall into one and the same error, at one and the same time, and misunderstand the language used by your Lordship, precisely in the same manner and to the same extent. Whether Mr. W. B. Gurney himself did not fall into a similar error, which, independent of "the common practice," rendered it peculiarly proper, and even indispensable, that your Lordship should revise his Report in this instance, I do not think it necessary, and it would perhaps be fruitless to inquire.

I hope that your Lordship will not so far mistake me, as to suppose that it is my object to dispute the authenticity of the Charge, as it now appears, revised by your Lordship, in Mr. W. B. Gurney's publication. All that I intend to show, is, that it is still objectionable; and so far, at least, as relates to myself, not warranted by the Evidence. And it is remarkable that your Lordship did not begin by directing the Jury to decide upon the

* Debate on Lord Ebrington's Motion.

Evidence they had heard, but upon that *Statement* of the Evidence which your Lordship should make to them (p. 448), which statement, as it appears to me, was neither impartial nor correct.

In the first place, I shall beg leave to offer a few observations on the zeal displayed by your Lordship during the investigation of De Berenger's identity with that of the pretended Du Bourg, which it was necessary to establish before aught could be effected against myself and others. This identity was undoubtedly satisfactorily proved; but when one of the witnesses was asked, Whether he had not previously described the person as one that had a great red nose and a blotched face? (De Berenger's countenance being pale and free from blotches), it was, I apprehend, no part of your Lordship's duty to exclaim, "Red or not, sure you are of the identity of the face," (p. 118).— If my Counsel had duly cross-examined certain witnesses,* on the subject of De Berenger's Dress, it would possibly have been found full as necessary to exclaim, "Red or green, sure you are of the identity of the coat." And I have no doubt, my Lord, that the Hackney-coachman at least, had he been found to prevaricate as to the colour of the under-dress,† which probably he never saw,‡ would have taken the hint, and identified the coat, as others did the countenance, by swearing to the *cut* of it. Another instance of unnecessary interference on the part of your Lordship, may be found in the Examination of one of the persons

* The three last witnesses to the dress, Shilling, Bartholomew and Crane.

† Unless the Committee of the Stock Exchange introduced a falsehood into their Report, this person had told them that the upper coat was brown: at the trial he swore positively that he never had so described it, (p. 125).

‡ See Affidavit of Mr. Charles King, annexed to my Address to the Electors of Westminster; reprinted at the end of this Letter.

who appeared in support of the Alibi,* which was most wickedly set up, and who represented De Berenger as being engaged in measuring a garden in York-street, Westminster, on the day before the Fraud. The question, put by your Lordship, whether or not he stood ankle-deep in snow? (p. 415), was not only wholly unnecessary, but extremely improper, as there was not, on the 20th of February, any snow on the ground. In summing up the Evidence, your Lordship spoke with great self-complacency of having discovered, by certain questions put to this last-mentioned witness, that he had been bail on at least two occasions; and your Lordship observed, that “a man who is in the habit of being bail must swear to the amount, and he must swear he is an housekeeper;” and this man had no house over his head of his own, “but was living in the house of another,” (p. 457). Here your Lordship takes a part of this man’s Statement, and suppresses another part: and the impropriety of your Lordship’s remark will appear, when it is considered that he had stated, and was not contradicted, that he had been a housekeeper down to the 17th of February, (p. 411). And there was not any proof, that he had acted as bail subsequent to that period.

Your Lordship delivered yourself eloquently, and even exultingly, on the subject of De Berenger’s identity; “You were yourselves witnesses,” said your Lordship to the Jury, “to the manner in which the witnesses who spoke to the person of De Berenger were put upon the investigation; and they were told to look round the Court, and they accordingly threw their eyes about the Court in every direction, before they found the person whom they said they had so taken notice of; you saw them look behind them, look down, and on every side of them, and then suddenly, as if they were

* See Correspondence with my Solicitors on this subject, in my Defence in the House of Commons.

" struck by a sort of electricity, conviction flashed upon their minds the instant their eyes glanced upon him: this occurred in every instance, I think but one, where the witness, not having his eyes conducted that way, did not discover him," (pp. 454, 5). The fact, however, is, that neither Bartholomew nor Barwick spoke with confidence, although De Berenger was actually pointed out to them, (pp. 120, 122). Even Crane betrayed his uncertainty, although he had been previously to the Messenger's house to identify him, (p. 124); and Mr. Solomon, who had also been sent to identify, could not speak with any degree of certainty, (p. 132). Shilling who was certain, had previously seen him at the Messenger's, (p. 116); and Mr. St. John, (whose evidence and conduct were justly censured by Mr. Park (pp. 316, 317), though palliated by your Lordship (p. 463), had seen him at Westminster Hall, when he pleaded to the Indictment (pp. 79, 80); and with respect to Tozer,* the witness who did not at all recognize him, because, as your Lordship says, " his eyes were not conducted that way," it is fair to observe, that he was directed to " look to the end of the row" (p. 109); and Mr. Park, the Counsel for De Berenger, desired his Client to hold up his head, (p. 110). The proof of identity was doubtless satisfactory; but, if I have succeeded in showing that it was not such as to warrant your Lordship in bespeaking for it not only the faith but the admiration

* In recapitulating the Evidence of this Witness, Lord Ellenborough said, " This was the Witness who, looking round, did not find the Defendant; to be sure, the Counsel might have asked him whether that was the person; but from *delicacy* that was not done, which was certainly an unnecessary delicacy upon such a subject." (p. 472). The Delicacy of the prosecuting Counsel was particularly conspicuous in his bringing my affidavit into Court as Evidence against myself, and in *threatening* to prove the publication of it upon me (p. 34), although he knew that there was nothing that I would more readily avow. Another instance of his *delicacy* was, his acceptance of a retainer from the Stock Exchange Committee, after accepting my fee for an *opinion*, and another for a *consultation*.

of the Jury, the public will judge how far it was decorous in your Lordship to use the animated and even triumphant language which I have above cited.

Your Lordship was severe, and probably with justice, on the confidence with which Mr. Tahourdin, De Berenger's solicitor, denied the Dover letter to be of the hand-writing of his client. Yet Mr. Tahourdin, who was undoubtedly familiar with De Berenger's hand-writing, had, *primâ facie*, rather more right to be positive than Mr. Lavie,* the zealous Solicitor for the Prosecution, who had no other knowledge on the subject than such as he had acquired by intrusion subsequent to De Berenger's apprehension. Mr. Lavie, however, who might have done better (as Mr. Park observed, p. 310) than to have given his own Evidence to the hand-writing, was, if possible, more positive, that the Dover letter was written by De Berenger, than Mr. Tahourdin was to the contrary. Mr. Tahourdin said he had received a thousand letters from De Berenger, and on being asked whether he believed it to be his hand-writing, he answered, "I do not indeed—" "it is not his hand-writing:" and on comparing it with another letter, your Lordship observed, "The gentleman may look at the two letters; but that furnishes no argument, for a person would certainly write a disguised hand at that time, if ever he did in his life. This gentleman does not go on belief that it is not, but he swears positively that it is not his hand-writing," (p. 368). Mr. Lavie, on the other side, declared that he could "*swear without the least doubt that it was De Berenger's hand-writing,*" (p. 92). But your Lordship did not then exclaim, in a tone of reprehension, as in the

* It has been represented to me as a remarkable circumstance, that the Stock Exchange should have selected a gentleman, who is said to be a devoted friend of the Judge of the Admiralty, and the Solicitor of Lord Gambier, to conduct the prosecution, rather than the Solicitor for the Bank, or any other Solicitor.

case of Tahourdin, " This gentleman does not go on belief that it is his, but he swears positively that it is his hand-writing." So far from that, in stating the Evidence of Mr. Lavie, your Lordship observed, " The Evidence of Mr. Lavie is *only that he believed* this to be De Berenger's hand-writing," (p. 466); and such Evidence your Lordship intimated was sufficient. To me it appears that Mr. Lavie's Evidence was full as positive as that of Tahourdin: and how Mr. Lavie, with his slender knowledge on the subject (not very decently obtained,) could swear without the least doubt that the Dover letter was of De Berenger's hand-writing, although it was proved to have been very dissimilar from the general character of that hand-writing, is best accounted for by admitting a determination on his part to lose nothing for want of Evidence. Lord Yarmouth deposed, that if his suspicions had not been previously awakened, he should never have suspected the Dover letter to have been written by De Berenger, with whose hand-writing he was perfectly familiar; and that on looking through it with a view to detect the resemblance, he could find only one letter (the large R in the signature) that created a suspicion (p. 374, 5, 6). That De Berenger was the person who wrote that letter, there is now no reason to doubt; but when it is considered that at the Trial the proof of personal identity appeared partly to depend on the proof of that hand-writing, the conduct of Mr. Lavie in this particular, and let me add, of your Lordship, was certainly, to speak mildly, somewhat extra-judicial.

By the Evidence annexed to the Letter which I had the honour to address to the Electors of Westminster, on the day on which it was intended to exhibit me in the Pillory, it is, I am persuaded, satisfactorily proved, that De Berenger changed his dress in the post-chaise which conveyed him from Dartford to the Marsh-gate. I am the more confirmed in this opinion, because I observe

that those persons who are hired to libel me in newspapers and pamphlets (for I cannot suppose that their malice is wholly gratuitous),* have since affected to speak of the subject of the dress as a minor circumstance; as if it were of little importance to the merits of the case, whether De Berenger presented himself to me in the dress in which he committed the Fraud, or had secretly changed it before he came into my presence. It is a triumph to me to perceive the contempt with which my enemies now pretend to consider the subject of the dress, as it proves that they are sensible of being defeated in the only point in which your Lordship had taught them to consider themselves invulnerable. While they betray their own belief of my innocence, I can despise their unabated endeavours to persuade others that I am guilty. The supposed appearance in "the Costume of Crime," was by far the principal argument against me, and was supposed at once to convict me both of the Fraud and Perjury. So long as it could be bolstered up by any appearance of Evidence, it was the vital part of the Case. It was *so treated* by your Lordship, (pp. 452, 478, 9; 484, 5, 6, 7), and *so termed* by the Counsel for the Prosecution, who, with more than his accustomed veracity, observed, that my Counsel had called witness after witness to corroborate inferior points, but had left me "without confirmation upon that important, that vital part of this Case, to Lord Cochrane, *viz.* the dress which Mr. De Berenger wore at the time he came to that House, and had with him that interview," (pp. 440, 1). This exhibits in a strong and convincing light the paramount importance of that part of the Case, which my enemies have since endeavoured to depreciate.

At what period De Berenger changed his dress in the chaise is not otherwise important, than as the consi-

* I am informed, however, that they distribute their Publications *gratis*.

deration of it appears to lead to an additional proof of the fact. It is highly probable that the change took place between the coach-stand at the Three Stags, Lambeth Road, and that at the Marsh-gate. According to the Evidence (as it was called) of Shilling the postboy, before the Stock Exchange Committee, De Berenger drew up the side-blind at the corner where he sat, *as if to hide himself*, on perceiving that there was no coach to be obtained at the former place. At the Trial, he deposed that he saw the side-blind was up, but did not see when he pulled it up, but thought he did it as he came round the corner, (p. 119). Your Lordship, in summing up, misstated this part of the Evidence; and, notwithstanding the Witness had said positively that the side-blind was up, and that he did not see when he pulled it up, your Lordship represented him as saying, "I think he pulled up the side-blind, which had been down before *all the way*," (p. 474).

If your Lordship understood that he did not pull it up till his arrival at the Marsh-gate, and that it had been down before all the way, your Lordship's understanding and the meaning of the Witness are clearly at variance. "The *Statement of the Evidence*" (as it appears to me) does not allow time for De Berenger to have changed his coat while the side-blind was up. According to the *Evidence itself*, there might have been ample time for that purpose. The "Corner," alluded to by the Witness, must either have been the corner at the Three Stags, or that at the Asylum; the latter two hundred, and the former more than four hundred yards from the Marsh-gate; but as he "did not see when he pulled it up," it might have been done before. It is, however, the most probable (as well as most agreeable to the evidence of this Witness, both at the Trial and before the Committee), that De Berenger pulled up the side-blind as he came round the *first* Corner by the Coach-stand at the Three

Stags, and the probability is, that it was in order to conceal himself for the purpose of changing his dress. On being disappointed of a coach at the former stand, (owing I conceive to the early hour of the morning), he would naturally apprehend that he might again be disappointed at the other; which indeed was very near being the case, as there was only one coach on the stand, (p. 113). He would then have had no alternative but of walking through the streets in the dress of his Fraud, or of proceeding with the chaise-and-four to wherever he chose to terminate his expedition; either of which might have occasioned his detection. It was therefore an act of evident expediency, and probable necessity, to effect a change of dress before he arrived at the Marsh-gate.

If my Counsel, or your Lordship in their default, had thought proper to question the post-boy as to the period at which he saw De Berenger in his scarlet coat, it would have appeared that he did not observe it at the time at which he quitted the post-chaise, and that he did not mean to swear that he left the chaise in that dress. He has since declared, and has offered to testify on oath, that De Berenger might, as he verily believes, have changed his dress before his arrival at the Marsh-gate, without being noticed by him; that he had with him a portmanteau, or parcel of some kind large enough to contain a coat; that he did not see his under-dress when he quitted the chaise, and has no knowledge whether it was the same he had previously seen or not. And the Evidence which he gave at the Trial is perfectly consistent with this statement. He did indeed say that De Berenger wore a red coat; but it is clear, from other parts of his Evidence, that he alluded to his previous appearance, and not to the period of his quitting the chaise: for he says, that "the coat had some sort of a star upon it, but he was not close enough to see it, and could not swear to what it was," (p. 115). Now, if he had been

speaking to his appearance at the Marsh-gate, he must have been "close enough;" for he says, "I opened the chaise-door," (p. 113). It is evident, therefore, (admitting his credibility, and as he has hitherto been considered the second best Witness for the Stock Exchange, I apprehend they will not object to it), that he was speaking to his appearance at a previous period, when he saw him at a distance; which must, I apprehend, have been on some occasion when he turned round on his horse, and observed him in the chaise. He is either not to be believed, and his Evidence to the dress is nothing; or he did not observe it at the Marsh-gate, which, as far as I am concerned, is precisely the same thing. But I consider him consistent in this part of his Evidence, because I think it appears from another answer that he had no opportunity of observing the dress at the Marsh-gate; for he describes him as stepping out of the chaise into the coach, and says, "He then held his hand down, and gave me two Napoleons; he did not say that one was for my fellow servant and the other for myself, but I supposed it was so," (p. 114). Hence it appears that he stepped from the chaise to the coach, without stopping to speak to the Witness, or to give him his reward; that he held his hand down for that purpose; which, whether it implies that he presented it with his side or back towards him while entering the coach, or that he put his hand down after he had entered (the latter I understand was the fact), is tolerable proof that he allowed the Witness no opportunity of observing his under-dress. It proves, too, I think, which is more important, an anxiety that the Witness should not see it. He appears to have conversed very familiarly with this Witness in the course of the journey (pp. 111, 112), and would hardly have quitted him so abruptly without a parting word, if he had not been anxious to avoid his further observation. He was very desirous, and

with great reason, that the post-boy should not perceive the transformation that had taken place.*

Shilling's observation of the dress, at any period, appears to have been very imperfect. He declined swearing to the colour of the outer coat, which he thought was a kind of brown, but which in fact was proved to be grey, according to the description in my Affidavit: he thought there was a kind of white fur upon it; although, in fact, there was no fur at all. He saw a red coat down as far as the waist, but did not see the skirts of it, and thought it was turned up with yellow, but would not like to swear to that; and assuredly if it was an *aid-de-camp's* coat, as asserted by other Witnesses, it could not have had yellow facings, or any facings at all. And it had a Star of some sort upon it, but he was not close enough to see it, and could not swear to what it was (pp. 114, 15). Yet this is the Witness spoken of by Sir Simon Le Blanc, as "the post-boy" who "had opportunities, during the last stage, of seeing him while he was out

* This is further confirmed by a piece of Evidence, which Shilling declares he gave before the Committee, but which, in part, those honourable gentlemen thought proper to suppress; namely, "that when the pretended Colonel stepped from the chaise into the hackney-coach, he placed his portmanteau or parcel close to his breast, wrapping his great coat over it; that he threw his sword with his right hand on the front seat of the coach, and sat down on the back seat, giving him two Napoleons with his left hand." His placing the portmanteau close to his breast, and wrapping his great coat over it (circumstances which were omitted in the Stock Exchange Reports), were probably for the double purpose of concealing the coat which he then had on, and that which he had just taken off, which in the hurry in which the change was effected he probably had not had time to secure sufficiently in the Portmanteau. And the alteration might have taken place in this hurried manner, if he pulled up the side-blind on coming round "the corner," as suggested by the Witness at the Trial, even if the corner alluded to was the second corner at the Asylum.

" of the carriage, and walking up a hill, and while he " conversed with *them*, directing *them* to the place to " which he should be driven," (p. 590). Now as Sir Simon mentioned only one of the Dartford post-boys, and as in fact he had no cognisance of the other, who was not examined, it is clear that he took the liberty, or exercised the *jew*-dicial authority of clipping this same *Shilling* into two. Moreover, he appears (accidentally, no doubt) to have *eked* out about sixpenny-worth more of Evidence; for there is not in the Trial one word about De Berenger getting out of the carriage and walking up a hill : it is, to all appearance, the pure mintage of *some* ingenious Judge. I read, indeed, in *Shilling's Examination*, that on arriving at Shooter's Hill, " the gentleman looked out " of the window," (p. 112). It is possible, that your Lordship may have misunderstood the Witness; or that Sir Simon, in the hurry of passing Sentence, may have misunderstood the *Minutes*. Instead of " *looked out of* " the window," your Lordship may mistakingly have written, or Sir Simon may erroneously have read, " *leaped out of the window;*" and " *if so,*" (p. 482), as there was no Evidence of his leaping in again, it was little enough to conclude that he " walked up the hill;" otherwise, instead of a leap and a walk, we should have a flight of judicial imagination.

I have already shewn, not only that *Shilling* did not swear, and did not intend to swear to the dress at the period of De Berenger's quitting the chaise, but that it is clear from the Evidence, that he was speaking to a previous period only, and that he did not, and could not take any observation at the Marsh-gate, either of his person or dress. Yet the learned Judge aforesaid had, it should seem, your Lordship's authority to assert, that he was spoken to positively by the post-boy at that period; namely, the period at which he was stepping from the post-chaise into the hackney-coach, (p. 591). And in the very same sentence, speaking of the evidence

of the *waterman*, Sir Simon says, "He swears distinctly "to his person and his dress, and that he had then a "scarlet coat under a grey great coat," (p. 591). He did indeed swear to a scarlet coat, (how truly I now leave the world to judge);* but instead of a grey great coat, as asserted by Sir Simon, he swore to a "dark drab military sort of a coat" (p. 119.); and so far from "swearing distinctly to his person," he said, that he did "not see that he could recollect him;" but when he was actually pointed out to him by the Counsel, he deposed, upon his word, that he thought he was like him, but he only saw him for about half a minute,† (p. 120).

If it were possible, or worth while, to point out all the variations in the depositions of different Witnesses, one of whom described De Berenger as a tall person, (p. 101), although he is certainly under the middle size, and another (he who had so many "opportunities") expressing the greatest uncertainty, and evincing many inaccuracies, it would appear that there is less truth than eloquence in the following passage in your Lordship's Charge to the Jury: "So multiplied a quantity of testimony, so clear and so "consistent, was, I think, hardly ever presented in the "course of any criminal Trial; differing in no circumstances respecting his person and dress, excepting in "some trifles, which, amidst the general accordance of "all material circumstances, rather confirmed by this "minute diversity, than weakened the general credit of "the whole, and gave it the advantage which belongs to "an artless and unartificial tale," (p. 455).

In summing up the Evidence, it was usual with your Lordship to take part of an answer, and suppress another part: thus your Lordship represents Shilling as saying,

* Q. Had there been no reward from the Stock Exchange, would either the coachman or his waterman have sworn to a scarlet coat?

† Q. Did he see ~~at~~ ^{him} at all?

that "the coat had some sort of a star upon it" (p. 475); but how came your Lordship to overlook the remainder of his answer, namely, that he "was not close enough to see it, and could not swear to what it was?" (p. 115). It is perfectly clear from the Evidence, that whatever was the colour of the coat in which De Berenger came to my house, he had at least divested himself of his ornaments before he came there. Shilling's Evidence to the star amounts to nothing; he either did not see it at all, or he saw it indistinctly at a distance, at an earlier period. And neither the waterman nor hackney-coachman deposed to either the star or medallion. If De Berenger had effected no change in his dress, how comes it that the Witnesses, who spoke to his garb during the night, saw and bore testimony to the star, while those who saw him by day-light in the morning did not? It was either not a *fixed* star, or, like the stars in the firmament, was only visible by night.

Again; in stating the Evidence of the hackney-coachman, your Lordship says, "He (De Berenger) took a portmanteau that he had, and a sword—the portmanteau was a small black leather one," (p. 477); but your Lordship omits the remainder of Crane's answer, "big enough to wrap a coat up in," (p. 123). It may be said that there are few portmanteaus that are not big enough for that purpose; but still it was a circumstance which your Lordship ought not to have omitted, because it had a tendency to bring home to the minds of the Jury the probability of De Berenger having possessed the means of changing his coat. It was, I conceive, your Lordship's duty to have recapitulated those words; and you might very fairly have added, 'So that you see, gentlemen, that De Berenger may have had the means of changing his dress before he appeared in Lord Cochrane's presence.' So far from that, your Lordship did not omit to tell those credulous gentlemen, that it did not

+ ||

D

appear that De Berenger had any means of shifting himself! (p. 484). Was it that your Lordship did not wish the Jury to connect the idea of the portmanteau with its probable contents, that you omitted the words, "big enough to wrap a coat up in?" I could have wished that your Lordship had favoured the Jury with your own private opinion as to the contents or purpose of that portmanteau. It was in Evidence, that De Berenger had with him a small portmanteau when he bought his scarlet coat, (p. 160): and your Lordship evidently considered it to be the same which had been spoken of by Crane: for in stating the Evidence of Mr. Solomon, the person who sold the articles of dress, "that he took them away with him in a coach—he had a small portmanteau with him," your Lordship immediately observed to the Jury, "You remember there is a leather portmanteau spoken of," (p. 488). And your Lordship, I am certain, had not a doubt that he conveyed his scarlet coat to Dover in that portmanteau.—The Solicitor-General has assured us that De Berenger was supposed to be no fool, although he did not argue very wisely on that supposition.* But

* During the Debate on Lord Ebrington's motion, the Solicitor-General is represented to have said, that "De Berenger, who had never been supposed to be a fool, must have known that Lord Cochrane was one of the participators in the Fraud, otherwise the house of Lord Cochrane would have been the last to which he would have gone," (*Times*, July 20). To me it appears that the house of an accomplice was the last to which any body but a fool would have gone; because any body but a fool, in De Berenger's situation, must have foreseen, that wherever he should, in the first instance, proceed, after exciting so much attention and curiosity, and after a transaction which would so soon be known to have been fraudulent, and so quickly stir up inquiry, to that place he would inevitably be traced. And any body but a fool must have known, that to go immediately to the house of an accomplice, would lead to the discovery of that accomplice, and consequently to his own detection. De Berenger was not such a fool as to proceed immediately to the house of an accomplice, with an hackney-coachman for a witness, when there were so many places of common resort in

it would have been worse than folly, it would have been madness to have prematurely arrayed himself in so remarkable a dress, intended for so criminal a purpose. Your Lordship knew, that it had not been attempted to trace him to Dover in that splendid apparel, and that it was next to impossible that De Berenger should have exposed himself so egregiously to defeat and detection. It could not possibly have escaped your Lordship's penetration, that De Berenger must have gone down to Dover in a dress different from that in which he returned; and with that conviction on your Lordship's mind, and with the evidence of the portmanteau before you, "big enough to wrap a coat up in," it must have struck your Lordship, "as by a sort of electricity," that De Berenger had the means of shifting himself; and that I, who had never before been suspected of fraud or falsehood, might possibly have spoken and sworn to the truth!

The circumstance of his taking the sword out of the coach, together with the portmanteau, as deposed to by

London, to which he could have gone, and obtained a hat, and a coat too, if necessary, without exciting much astonishment, or leaving any clue to the discovery of his person: but he was weak enough to imagine that, by coming to me, he should secure an immediate retreat to America, having doubtless ascertained that the ship was then ready to sail, and anticipating no objection on my part which my knowledge that sir Alexander Cochrane was desirous of his services, and his own tale of distress, would not remove. And if he at all anticipated, not only that the imposition on the public, but the impostor's proceeding to my house, would eventually come to my knowledge, which, if the voyage had commenced as soon as he may have imagined, it might not have done for several months, he probably flattered himself that, by means of indignant protestations of his innocence, and other artifices, and his having appeared before me in his usual character, and not in the character and dress in which that impostor would be described to have appeared, he should be able to remove any suspicion against himself which I might possibly evince.

Crane (p. 123), is also very important. In his journey from Dover he had worn that sword—it was essential to his assumed character; but before he arrived at my nouse he had disengaged himself from it, and had it loose in the coach: so that, according to the Evidence of the chief witness for the Prosecution, he had made one material alteration in his appearance.* Now, for what possible purpose could he have taken off his sword, if he had been regardless of exhibiting himself to me in the false character of a military officer? There is no probable reason for his divesting himself of his sword, that does not equally apply to his putting off his sash, his star, and his medallion, his scarlet coat, and his assumed character altogether.

I have before observed, that the identity of De Berenger was certainly not proved by the hackney-coachman. I again mention this, to shew that your Lordship also mis-stated the Evidence in that particular. He had seen him at the Messenger's house, and therefore "it was no wonder that he pointed him out in Court. But, on being asked, "Were you of the same opinion when you "saw him at Mr. Wood's?" instead of returning a direct answer, he says, "When I came down stairs, he looked "very hard at me;" and to the next question, "Did you "know him then?" he replied, "Yes, it was some- "thing of the same appearance, *but* he had altered him- "self very much by his dress," (p. 124). Your Lordship left out the words, "something of the same appearance," and stated to the Jury that Crane knew him at the Messenger's, *though* he had altered himself a great deal in his dress, (p. 477).†

* This is corroborated by the chaise-driver, who informed the Committee that De Berenger threw the sword on the seat of the coach. See their *Report*.

† See the Affidavit of Mr. Charles King.

There is one particular in Crane's Evidence which might very well be believed, even if your Lordship had not elucidated it: "The gentleman gave me four shillings before he went in, and I said, I hoped he would give me another shilling," (p. 125). Whether your Lordship was anxious that the coachman should not be deemed of a mercenary character, lest the Jury should have thought it possible that he had lugged in the scarlet coat before he was asked, in his eagerness to obtain the reward offered by the Stock Exchange, I do not pretend to say; but if your Lordship had not been apprehensive that this additional demand of Crane would, at first glance, seem exorbitant, you would hardly have taken the trouble to travel out of the Record for its justification. "Hearing," says your Lordship, "that Napoleons had been distributed to drivers, he thought that a hackney-coachman might ask for a little more of his bounty than he at first received," (p. 477). Your Lordship, however, knew that it was not in Evidence, that Crane had heard one word about the Napoleons, nor is there the slightest reason to believe that he knew at that time that any such coin had been distributed: on the contrary, there was reason to conclude, from the secret manner in which De Berenger rewarded the post-boy, by holding down his hand, without speaking, as appears by the Evidence, (p. 114), that Crane had no opportunity of seeing or hearing of that description of reward; which is also pretty evident from his limiting his request to an extra shilling.

In another part of the Charge, your Lordship gave the Jury to understand, that the Napoleons which were found in De Berenger's desk, *tallied* with those which had been distributed on the day of the fraud, (p. 459). There can be no doubt that they were the same description of coin, and that they tallied with each other, as one guinea tallies with another. There was no Evidence, however, to any

particular tallying, and therefore it should seem that your Lordship deposed to it yourself, for the better introduction of the following remark: "therefore the proof in " this particular is dove-tailed and closed in, beyond any " thing I almost ever saw in a Court of Justice" (p. 459).

On Crane's statement, that the waterman opened the coach-door for De Berenger, your Lordship did not omit to infer, " So that he was within view of the " waterman" (p. 478): but, my Lord, the waterman's opening the coach-door was no proof that he saw De Berenger step out of the chaise into the coach; he would naturally, on opening the door, stand partly behind it; and the doors of the two carriages both opening towards him, would in all likelihood intercept his view of the passenger: whereas the view of those persons, who have since voluntarily come forward to swear to the green dress, and who saw De Berenger from the other side, was not subject to such interruption.*

I SHALL now proceed to the consideration of your Lordship's comment on my Affidavit of the 11th of March. It was in that part of the *summing up*, that your Lordship, according to every Report of it, except that which I am now considering, used the unqualified expressions quoted by me in the House of Commons. It appears, however, by the printed Trial now before me, which had the advantage of being revised by your Lordship, that some of these expressions were not quite so direct and positive as I had then every reason to believe. But I shall not fail to shew, that as they are now presented to me, they are such as were not warranted by the Evidence, nor conformable to that strict impartiality which your Lordship ought to have preserved.

* These persons had also the advantage of higher ground, and are much taller than the waterman, whose person is very short.

"The account", said your Lordship, "that is given
 of this man's pulling off his dress, as contained in the
 Affidavit of Lord Cochrane, is highly deserving of
 your attention," (p. 479). And your Lordship then
 proceeded to lay down the criterion by which they were
 to judge of it: "It is a rule of Law, when Evidence is
 given of what a party has said or sworn, all of it is
 Evidence (subject to your consideration, however, as
 to its truth), coming, as it does, in one entire form before
 you; but you may still judge to what parts of this
 whole you can give your credit; and also, whether that
 part, which appears to confirm and fix the Charge,
 does not outweigh that which contains the exculpation,"
 (p. 479). This, my Lord, may be very plausible, and
 since it comes from your Lordship, may possibly be very
 legal; but I am strongly inclined to suspect that it is
 neither true nor just. I am humbly of opinion, that your
 Lordship would have done better to have instructed the
 Jury, that unless the statement which I had made on
 oath, and which was before them as Evidence, was found
 to be inconsistent with, and contradictory to itself, they
 were bound to give credit to every part of it that was not
 contradicted and outweighed by other Evidence. There
 were circumstances in the Affidavit, which, separately
 considered, would admit of a confirmatory construction;
 at the same time that the entire statement was consistent
 and exculpatory. There was nothing more extraordinary
 in De Berenger taking off a green coat in my house, than
 in taking off a coat of any other colour; but the cir-
 cumstance of the stripping, in an abstracted point of view,
 was favourable to the Charge; yet, coupled with the
 circumstance of the coat so taken off being green, the
 effect of the whole was exculpatory, because it went to
 prove, that he had secretly divested himself of the dress
 of his crime, before he came into my presence. The
 Jury, therefore, were not to weigh one part against the
 other, as directed by your Lordship, and to consider the

acknowledged stripping as an argument against the alleged colour; but to take the whole, and to weigh it against any other Evidence in the Cause (if such there were) to the contrary.

The circumstance of "*the stripping*," (p. 478) which is described in three lines, might have been omitted without leaving any apparent chasm in the account; and the improbability of divulging a circumstance, which I, if guilty, must have foreseen would have been adduced as an argument of guilt, is so evident and strong, that if your Lordship had submitted it to the consideration of the Jury, at the same time that you bespoke their suspicion of the exculpatory parts of my Statement, it would not, I apprehend, have been any reflection on your judgment or impartiality. But as the merit of bringing forward the Affidavit in Evidence exclusively appertained to the Prosecutors, your Lordship appears to have thought it but just that they should receive the entire advantage of it.

The manner in which my Affidavit was seized upon by the Prosecutors, and brought forward as Evidence against me, as if, upon the very face of it, it was a false and perjured document, was neither a very decent, nor, as I apprehend, a very fair or usual proceeding. "We have not often," said Mr. Park, "had the experience of that which has been done to-day; I believe not above twice in my professional life, have I seen a Prosecutor put in an Answer in Chancery of the person who was Defendant, and then negative that Answer," (p. 301). In the Court of King's Bench, it was, I suppose, a still more unusual proceeding; and it should seem, that your Lordship was so agreeably struck with the novelty of the act, as to overlook its deficiency in points of inferior attraction.

After instructing the Jury to judge whether that part which appeared to confirm and fix the Charge, did not outweigh that which contained the exculpation, your Lordship says, " Now I will state to you what is Lord " Cochrane's Affidavit," (p. 479). And after reciting the introductory paragraph, which stated that I had obtained leave of absence to come to town for the purpose of making my deposition, your Lordship said, " Now it " is material to observe, that this Affidavit first introduced " the name of De Berenger in any public document : " whether it was known privately at any earlier period, " we are not informed," (p. 479). Which I take to be an insinuation, that possibly I might not have given up the name of De Berenger, if I had not had reason to suspect that it was already privately known. Your Lordship appears to have taken the hint from the Counsel for the Prosecution, who asserted, but was too wise to attempt to prove, that the *Committee* had previous and " private information, that Du Bourg really was De Berenger," (p. 30). They had indeed intimated in their Report, that they possessed further and very important information ; and it has since been shewn, that they had secret information, but not that Du Bourg really was De Berenger, but that Du Bourg was no other than myself !* It appears that they received this important information from their chief and favourite witness the coachman, whom they afterwards brought forward to swear to the person and garb of De Berenger!† And if it can be said that I was convicted upon Evidence, it was exclusively upon his Evidence to those points. I agree with the

* See the Affidavits of James Yeowell and James Lovemore, reprinted at the end of this Letter.

† In an advertisement of Mr. Bish, in answer to applications said to have been received from public charities, for a portion of the property detained by the Committee, it is declared that the *Stock Exchange* gains nothing by the verdict but *HONOUR* !

Solicitor General that his testimony was very *natural*;* for it was very natural for such a man to swear any thing for money; but I think it was a most *unnatural* conclusion of that learned gentleman, that he would upon such testimony have convicted his own brother.†

Your Lordship took considerable pains to impress upon the Jury, that on the 11th of March, the date of my Affidavit, De Berenger might reasonably have been supposed to be out of the kingdom: "The Davisons," said your Lordship, "have informed you that the day he finally disappeared was the 27th of February (Mr. C. Johnstone having called and left a letter, for what purpose we know not, on the 26th); he appears to have very soon got to Sunderland, and might on the 11th of March, the date of this Affidavit, be reasonably supposed to have been out of the kingdom," (pp. 479, 480). And again, in the same page, "The Affidavit was, as I have already stated, sworn March 11th 1814, by which time it might be well supposed that De Berenger, if he had made proper speed, had got out of the kingdom," (p. 480). And in stating the Evidence of Mr. Wright, who deposed, that when I gave him the Affidavit to be printed, I observed, that I had no reason to think that De Berenger was capable of so base a transaction; but if he was, I had given the Stock Exchange the best clue to find him out, (p. 199), your Lordship remarked, "He had given them a clue, by giving his name in the manner he has done in the Affidavit; but it would have been very ineffectual, if De Berenger had carried away his own person previous to that; but it was by accident that he was found at Leith," (p. 503). As the Counsel for the Prosecution had already urged this

* Debate on Lord Ebrington's Motion.

† "He declared solemnly before God and that House, that, had he been upon the Jury, he should have been bound to have given the same verdict, had the person tried been his brother," (*Times*, July 20).

argument upon the Jury, there was not, I apprehend, any necessity for your Lordship's triple repetition of it. His language, indeed, was somewhat stronger than that of your Lordship; for he said that I had no more doubt, on the 11th of March, that De Berenger was out of the kingdom, than that I myself was in existence, (p. 443). But your Lordship knew that Mr. Gurney had himself defeated his own assertion, by adding that "he was gone to the North, not gone to the South, to Portsmouth, to join the Tonnant," (p. 443). And why did he not join the Tonnant, but for the plain reason stated in my Affidavit; namely, that I did not choose to receive him unless he obtained permission from the Admiralty? If it be true that I referred him to the Admiralty, who had previously rejected his application, and who, in all probability, would again have rejected it, it follows that I had not the slightest idea of enabling him to quit the kingdom clandestinely, and no anxiety on my own account to enable him to quit it at all; and if it be not true, why did not he join the Tonnant? If I had been deeply and criminally interested in enabling him to effect his escape, and had the best possible means of accomplishing that purpose in the South, what did he do in the North? The sails of the Tonnant were then bent, she was ready to sail; and your Lordship knows that a naval commander is almost as absolute in his ship, as your Lordship on the bench. There can be no doubt that I could have conveyed De Berenger into the Tonnant with the utmost facility, under any name and character, and have concealed him there with perfect security. If it was not proper to have stated this obvious argument to the Jury, neither was it proper to echo the assertion of the Counsel for the Prosecution. It was at least as evident that I did not use the means which I possessed of aiding De Berenger's escape, as that I had reason to suppose, when I gave up his name on the 11th of March, that he was out of the kingdom.

Your Lordship says, that De Berenger finally disappeared on the 27th of February, and that he appears very soon to have got to Sunderland, (p. 479). The fact is, that there was no evidence of his being at Sunderland earlier than the 7th of March; and it was proved that he had not left that place on the 21st (p. 251); and he was apprehended at Leith on the 8th of April, four weeks after the date of my Affidavit. Why then was I to suppose that De Berenger was out of the kingdom? Had there been a fraudulent connection between De Berenger and me, would there not also have been a private correspondence? and must not I have known on the 11th of March, when he was residing at Sunderland, that he was not out of the kingdom? Why did not your Lordship give me the benefit of this argument with the Jury? If it had no great weight, it would not have endangered the object of the prosecution.

But, my Lord, the question for the Jury to consider, was not, whether it might or might not well be supposed on the 11th of March that De Berenger was out of the kingdom, but whether any innocent man, circumstanced as I was, could have made the disclosure at an earlier period? Can any man, any innocent man in particular, come forward to justify himself before he knows that he is suspected? When I rejoined the Tonnant on the 1st of March, which I did of course, my leave of absence having expired the day before, there was not even a whisper implicating me in the transaction of the 21st of February. My name was first connected with the fraud in the printed Advertisement of the Stock Exchange, which did not appear till the 7th of March; six days after I had left town, and only four days prior to the Affidavit. Your Lordship was well aware that this document ought to have been produced; and it is remarkable, that your Lordship long retained the idea that it would be produced; for, even while summing up the Evidence, your Lordship observed,

that you supposed that that Advertisement would be read. Whether your Lordship supposed that a copy would spring up in the jury-box, and that it would be read there, or that it would be produced in Court after the *summing up*, or after the Jury had returned with their verdict, does not appear; but it is certain (if the Charge, as revised by your Lordship, is correct), that while commenting upon that part of the Affidavit in which the Advertisement is mentioned, your Lordship added, "which I suppose will be read," (p. 486). This is strange! One would have thought that your Lordship must have known at that period that it would not be read, and that it was in fact too late to produce it. The date of that Advertisement was one of Mr. Gurney's reasons (for he had more than one, as I shall show hereafter) for not producing it: he knew that his argument, of my having wilfully delayed the disclosure, would have been defeated by the production of that Advertisement.

It appeared by the preface to the Affidavit (p. 201), that I had to obtain leave of absence from the ship, in order to return to town for the purpose of making my Deposition; and therefore it must have appeared to your Lordship, that at least a part of the delay was unavoidable. And if I could have foreseen that the very date of my Statement would be made Evidence against me, or if in the zeal and sagacity of my legal advisers I had possessed a substitute for my own want of foresight, it would doubtless have been fully shown at the Trial, as it was afterwards on my application for a new Trial, that so far from having purposely delayed my Deposition to give De Berenger time to escape, I had acted with the utmost alacrity and expedition. The Advertisement of the Stock Exchange was published on the 7th of March, and did not reach me on board the Tonnant, at Longreach in the river Medway, till the day following. And till the moment that it did so reach me, I had as little reason to apprehend

an accusation of Conspiracy and Fraud, as of sorcery or any other imaginary offence. How then could I have made the disclosure sooner than I did? To make the necessary arrangements in the ship, to return to town, and to draw up and swear the Affidavit, could not be accomplished in a moment; and yet on the 12th of March, my Affidavit, disclosing the name of De Berenger, and detailing the circumstances of his visit, appeared in all the morning papers.* What then becomes of Mr. Gurney's assertion, and of your Lordship's triple repetition of the argument, that I acted on the supposition of De Berenger being out of the kingdom? This opinion (for there was no proof) must have appeared very important to your Lordship, or it would not, I presume, have been thrice repeated in the course of the summing up. And indeed, to impress on the mind of the Jury an opinion that I delayed the disclosure in order to give De Berenger time to escape, was of itself sufficient to produce a verdict of Guilty; and therefore, if the fallacy of that opinion was not known to your Lordship at the time, yet when it did become known, namely, on my application for a new Trial (pp. 565, 6), it ought of itself, even if no other Evidence had been

* It can be proved by letters from Lord Melville and Admiral Surridge, that on the 8th of March, the day on which I received the information, I wrote to the first Lord of the Admiralty to request permission to return to town for the vindication of my character; and that, in my anxiety to do so, I applied personally to Admiral Surridge, the Port Admiral at Chatham, on the morning of the 9th, for leave of absence for twenty-four hours, without waiting for an answer from Lord Melville. He informed me, that the Admiralty had anticipated my wishes, and that he had sent off to me, about half an hour before, their permission to return to town, if I desired it; and a letter from Lord Melville; but which, of course, I had not received before I left the ship. I arrived in town on the evening of the 9th, prepared the Affidavit on the 10th; on the 11th it was sworn, printed in slips, and distributed to the newspapers, and on the morning of the 12th was made public. See also the Trial, p. 565, and my Defence in the House of Commons.

adduced, to have operated with your Lordship to have granted me a Re-hearing.

In commenting upon the first sentence in the Affidavit, in which it is stated, that my principal object in obtaining my first leave of absence (in February), was to lodge a specification to a Patent, your Lordship very graciously observed, "There is no doubt that Patent exists, and that there is a true transaction as to the Patent;" but then your Lordship immediately adds, "but whether it be introduced here as a colour, and to draw off your attention from other matters, is another point," (p. 481). It is indeed another point, a point at which your lordship ought never to have arrived; for even if the motive which I assigned for applying for leave of absence on the 12th of February (p. 565), was not the true motive, it was the only motive in Evidence before the Jury; and it was not incumbent on your Lordship to direct their "attention" to the possibility of any other motive for an act of the 12th of February, in the consideration of a question that did not arise till nine days afterwards.* But if there was "a true transaction as to the Patent;" if I did apply for leave of absence to lodge a specification to that Patent; if that was the

* To prove the fallacy of the insinuation (for such it evidently is), that my object in obtaining leave of absence in February, was not so much to lodge the specification to a Patent, as to assist in a Fraud, it is only necessary to appeal to my previous applications to the Admiralty on the subject. Before I first joined the ship on the 8th of February, and even before I took up my commission on the 5th, I repeatedly applied for time to prepare and lodge the specification in question; which I considered of the utmost importance, as it applied to a Patent for various improvements in illumination, including an improved convoy and marine-signal lamp, which I expected to introduce into the Navy. These applications were uniformly refused, until I had joined the ship, and carried her down to Longreach; which having done, I renewed my application on the 12th, and obtained leave of absence for fourteen days, commencing from the 14th, (pp. 564, 5),

reason which I assigned at the time for requesting that leave of absence, and as the first Lord of the Admiralty was in Court, and was a witness on the Trial, he could possibly have told your Lordship, whether it was or not; if I did actually lodge that specification accordingly, as was admitted by the Prosecuting Counsel (p. 351); if I went nearly every day to superintend the work that was executing for me, pursuant to the Invention for which that Patent was obtained, as was proved by Mr. King (p. 345); if I was actually so engaged on the 21st of February, as was abundantly proved; and if I rejoined my ship as soon as the specification was completed, which might have been proved, and was proved on my application for a new Trial (p. 565);* was there any reasonable or probable doubt that I did obtain leave of absence for the purpose of lodging that specification, and attending to the business connected with that Patent. Was it magnanimous, or even equitable in your Lordship to insinuate, that either the motive assigned for obtaining leave of absence was not the true one, or that it was introduced to draw off the attention of the Jury from other matters? Your Lordship did not, I think, believe, that when I made the Affidavit, I at all anticipated that either the Patent, or any other matter mentioned therein, would ever come under the consideration of a Jury. And how was it possible that the introduction of that circumstance should draw off their attention from

But if leave of absence had been granted in compliance with any of my previous applications (in some of which I confined my request to ten days only), it would have expired several days before the 21st of February, and consequently *on that day I should have been on board the ship.*

* It appears too by my Solicitor's bill, that the Specification was not completed till the 28th of February, the day on which my leave of absence expired. And as the necessity of my presence in town on the occasion, and my attention to the subject, are further proved by that Bill, I insert the *February items* at the end of this Letter.

any of those matters which it was their duty to consider? If your Lordship, in charging the Jury, had told them that *leave* had been obtained from the Admiralty to detain me in England for the purpose of being prosecuted, would that have drawn their attention from other matters? Could not your Lordship have immediately entered into those other matters; and did not the Affidavit immediately proceed to those matters, which it was the province of the Jury to consider? I am much mistaken if the Jury were in half the danger of being misled by my patent Lamps, as by the false lights held out by your Lordship.

The Affidavit then states: "That in pursuance of my daily habit of superintending work that was executing for me, and knowing that my uncle, Mr. Cochrane Johnstone, went to the city every morning in a coach; I do swear, on the morning of the 21st of February, (which day was impressed on my mind by circumstances which afterwards occurred), I breakfasted with him at his residence in Cumberland-street, about half past eight o'clock, and I was put down by him (and Mr. Butt was in the coach) on Snowhill, about ten o'clock." Now, I apprehend, that there was nothing very extraordinary or suspicious in my breakfasting with my uncle Mr. Johnstone, who lived so near me, or of availing myself of the circumstance of his going into the city in a coach, to proceed therein, so far as to Mr. King's manufactory, where my business lay. But your Lordship observes upon it, "Therefore these three gentlemen, who had so much to do on that day, were brought together, and had an opportunity of communicating together, at least at this time. They go on to the city together, after having, it may be supposed, had so much of communication together as was necessary for the current business of the day, whatever that business was," (p. 481). Here your Lordship instructs the Jury to suppose, from the circumstance of

Mr. Johnstone, Mr. Butt, and myself being in company together in the morning, that the business which each of us had to transact on that day, must have been in common, and that we met together for the purpose of deliberating upon it. I really do not see by what authority your Lordship instructed the Jury to give credit to the fact, voluntarily divulged by me, that I visited Mr. Johnstone in the morning; and at the same time to discredit that other fact immediately connected with it, that I so visited him, not for the purpose of communicating upon any business in common, but for the convenience of being conveyed in his vehicle to the place where my own separate and immediate business lay. I am not aware that there is any improbability in, or contradiction between the two facts; and as the latter is not only uncontradicted, but supported by other Evidence, I apprehend the Jury were not to doubt "to what parts of this whole" they could give their credit," but merely to deliberate as to its degree of importance. Neither were they to consider, whether the visit to Mr. Johnstone did not "appear to confirm and fix the Charge," and to "outweigh the part which contained the exculpation," namely, the alleged innocent object of that visit; and least of all were they to substitute the criminatory inference furnished them by your Lordship's imagination, for the exculpatory fact which was before them in Evidence.

It was proved, that whatever business was transacted for me at the Stock Exchange on the 21st of February, was effected by the broker under general orders, long previously received, (p. 168). It was shewn that I was not present at the Stock Exchange (p. 168); and it was not proved, (and I can tell your Lordship that it was not the fact), that I had any reason to believe, that any such business would be transacted for me on that particular day. Even the sale of 2,000*l.* for money, mentioned

in the Affidavit, was not ordered till the day following, as I have since ascertained. It appeared by the Evidence, that with me "the current business of the day" was to superintend work that was executing for me pursuant to a Patent: and, therefore, if my visit to Mr. Johnstone in the morning, and my accompanying him and Mr. Butt to the city in a coach, must needs be Evidence that the current business of the day, whatever it was, must have been in common; your Lordship might with as much propriety, and more appearance of proof, have instructed the Jury to suppose that they were partners in my Patent, than that I was a sharer in their fraud; if Mr. Butt was really connected in that transaction, which, however, I am firmly persuaded that he was not.

The Affidavit proceeds: "I had been about three quarters of an hour at Mr. King's manufactory, at No. 1, Cock-lane, when I received a few lines on a small bit of paper, requesting me to come immediately to my house: the name affixed, from being written close to the bottom, I could not read:" on which your Lordship observes, "That was certainly a very pointed observation which was lately addressed to you by the learned Counsel for the Prosecution, that the name which he says he could not read, would not, in all probability, have been written at the bottom; for he had finished the note once, and when it was sent back to him, there was space enough still left for him to write something more; for the servant says, he added something more afterwards; therefore it was not from its being crowded at the bottom, unless it be, that he had not signed any name till quite the last, and after he had written the addition which Lord Cochrane mentions,"* (pp. 481, 2). Now, I am perfectly certain that no

* This is an error. His Lordship doubtless meant to have said, "which the servant mentions," (p. 349).

other Judge would have quoted such an observation from the prosecuting Counsel, unless it were to remark that the learned gentleman had forgotten that there were two sides to the paper; or that the "something more" might have been written at the top, or opposite the signature, or might possibly have been an interlineation, or might have been written across. It is singular that your Lordship found no opportunity of quoting any "*pointed* observation" from the speech of Mr. Serjeant Best, the Counsel who conducted the Defence. It is true that your Lordship called for the Defence at a time when much *point* was not to be expected from that learned gentleman: and your Lordship's proceedings on that occasion shall be particularly adverted to, in a subsequent part of this Letter,

"The servant told me it was from an army officer; and concluding that he might be an officer from Spain, and that some accident had befallen my brother, I hastened back, and I found Capt. De Berenger." On this your Lordship observed, "Now, certainly his anxiety about his brother, if true, was a very good motive for his returning; but I addressed some questions to the witness on this subject; I thought it very likely, if that was the motive which induced Lord Cochrane to return, that he should have disclosed that reason to the person who brought the note, especially as he was a servant who had been seventeen years in the family; nothing could be more natural than to say, 'Thomas, I hope there is no bad news from my brother, your old master:' no such thing passes; but, 'Well, Thomas, I will return,' is all that he says to him; he does not mention any thing about any apprehension as to his brother," (p. 482). It appears to me, that nothing could be more fallacious or more unjustifiable than these observations. It was doubtless natural to have asked a question or two as to the appearance and busi-

ness of the person who wrote the note, and it is perfectly within my recollection that I did so, and that the servant told me it was from an army officer; but as at the same time he declared that he neither knew his person nor his purpose, to have communicated to him the apprehensions which then came across my mind, would have led to no information, and would have been altogether useless, and therefore not to do it was, in my humble opinion, neither unnatural nor extraordinary. And if I really apprehended "that some accident had befallen my brother," whose illness was in evidence before your Lordship; if, in fact (as your Lordship must have understood the expression), I was suddenly impressed with the idea of his dissolution, "nothing," in my opinion, "could be more natural" than to be somewhat too powerfully affected with my own feelings to think of communicating them to the servant, even in the "*natural*," and let me add, *easy* manner suggested by your Lordship: and "nothing," I think, "could be more natural" than that the first impression of a brother being recently dead in the family, should supersede the recollection of how many years the servant had lived in it.

But what were the questions which your Lordship addressed to the servant, and to which you allude with so much self-complacency?—"What did Lord Cochrane say or do," said your Lordship, "when you gave him that note?" Answer: "He said, 'Then I must 'return.'"* To which your Lordship rejoined, "That was *all* that he said?" (p. 351). This appears to me to be no question at all; but it is according to the mode of interrogation (if it can be so called) occasionally adopted by your Lordship; which is calculated, in my opinion, to take an undue advantage of the

* In answer to so general a question, the Witness did not feel himself called upon to enter into particulars, but merely to state the result.

simplicity or timidity of a witness ; and not only to divert or deter him from a circumstantial answer, but betray and hurry him into a mere expression of acquiescence. The servant replied, " Yes, I saw him come out of Mr. King's," (p. 351). In a previous answer he had said, and said truly, " I left him at Mr. King's," (p. 349). But if he *left* me at Mr. King's, he could hardly have seen me come out of Mr. King's ; because, supposing him to have made " proper speed," he must have passed the corner, which is not more than twenty yards from Mr. King's door, in less than so many seconds. He now says, that he did not see me come out of Mr. King's ; and I will just tell your Lordship how he acquits himself of false evidence. He says, that when, in answer to your Lordship's question (so called), " That was all that he said ?" he replied, " Yes,* I saw him come out of Mr. King's—" he had not by any means finished his reply, when your Lordship proceeded to put a fresh question ; and that he was about to have expressed himself to this effect : ' I saw him come out of Mr. King's warehouse, through the passage of the manufactory into the workshop, where I was standing at the door, and gave him the note, which he opened, and then went again into the passage, and read it at the window ; which having done, he asked *who it was that sent it, and if I knew what he wanted?* To which I answered, that I thought he was an army officer, but that I never saw him before, and he did not say what he wanted. On which his Lordship said, ' Then I will return.'† I know

* It is hardly necessary to observe, that nothing is more common, particularly with persons of a certain class, in answering a question at any length, to begin with the word " yes," although the entire answer may not be in the affirmative.

† That the servant had not said all that he had to say on the subject, is confirmed by the Evidence of Mr. King, who, on being asked, " What did his Lordship do on receiving that note?" answered, " He immediately opened it, and returned into the passage of the

that the witness ought to have said thus much, and I believe that he would have said it, if the form of the question, or the time allowed to reply, had admitted of a circumstantial answer. Your Lordship, however, hastened to put certain questions respecting his knowledge of my brother, Major Cochrane; and then wound up the whole with a repetition of the aforesaid decisive and self-answering question, "ALL that Lord Cochrane said was, 'Well, Thomas, I will return!'" (p. 351).

Mr. King, too, according to your Lordship's statement of his Evidence, deposed, that I only said, "Very well, Thomas;" to which your Lordship did not forget to add, for the benefit of the Jury, "not making any observation expressive of anxiety as to his brother," (p. 515). The fact was, that in answer to a question (if it can be so called), put by your Lordship, "He made no observation upon reading it?" Mr. King replied, "No, *not that I heard*," (p. 346).^{*} Your Lordship was either not quite satisfied with this answer, or quite delighted; for, excepting the intervention of a single question from a Juryman, which, together with the answer, contained only six words,[†] your Lordship instantly repeated the same question, "His Lordship did not make any observation upon reading it?" to which Mr. King replied, "No, I *think* only that he said, 'very well, Thomas,'" (p. 347);[‡] which your Lordship

"manufactory: He came into the workshop again, and shortly after went away," (p. 346). As I went into the workshop again, it is highly probable that the servant left me at Mr. King's, according to his previous answer; and that when, in answer to a different question, he deposed that he saw me come out of Mr. King's, he was about to have said, "out of Mr. King's workshop, into the passage of the manufactory, &c."

^{*} This might have suggested to Lord Ellenborough the propriety of asking, "Whether he was within hearing?"

[†] "Q. Did it occupy any time? A. No," (p. 346).

[‡] These are very different words from those deposed to by the

ought to have known was quite as much as Mr. King could reasonably be expected to have heard, even if I had made twenty observations upon reading the note, and put twenty questions to the servant who brought it. Mr. King had deposed, that I retired into the passage of the manufactory to read it (which I did for the benefit of the light, as it had a window at the end towards the street), and *came into* the workshop again; whence your Lordship might have collected, that while I was reading the note in one apartment (in the presence of the servant), Mr. King was in another; and that the apartment in which Mr. King was, was his own workshop: and it was in evidence that Mr. King was a tin plate-worker, (p. 345). And unless your Lordship imagined there had been no *knocking* in Cock-lane since the *days* of the Ghost, you must have had some conception, that in that workshop, at that busy hour of the day, there must have been no small din; and therefore it was rather too much to suppose that Mr. King must have overheard whatever passed between me and the servant in *another place*. I admit that Mr. King deposed (and very truly I have no doubt), that he *saw* me read the note in the passage of the manufactory, which he might very well have done through the glass part of the workshop-door; but, admitting the door to have been open, he must have seen me at a distance of not less than five yards, the length of the passage; as it was at the further end, against the window towards the street, that I stood; and it is not too much to say, that five yards in the tumult of a tin-shop is as great an obstacle to a listner as five hundred in another place. Mr. King,

servant, "Then I must return," (p. 351). And as Mr. King was examined first, it is curious to observe the dexterity of the Judge in putting two of Mr. King's words into the servant's mouth: "All that Lord Cochrane said was, 'Well, Thomas, I will return?'" (pp. 351, and 516). Two witnesses to my saying so little on the occasion was certainly better than one, especially if they could be made to agree as to what that little was.

therefore, after a lapse of near four months, might very well think that I only said, "Very well, Thomas,"* especially as there was another large workshop over his head, where a number of his men were in the full exercise of their hammers, and a brazier's shop over the way.

Your Lordship continued to observe upon the affidavit as follows: "His brother, as appears by the returns which have come home, had been wounded, or was upon the sick list; but it does not appear that he had then actually received any communication upon that subject; and which, if he had received any such, might have been expected to be proved, and might easily have been so," (p. 482). I admit that it was not particularly proved at the Trial, that I had received any communication on the subject of my brother's illness prior to the 21st of February; but as it appeared by the Evidence of Mr. Bowering of the Adjutant-general's office, that the returns mentioned by your Lordship extended from the 24th of December to the 24th of January, that they were dated the 25th of January, and were received in the regular course (p. 347), in all likelihood, they had arrived before the 21st of February; and therefore it must have appeared to your Lordship exceedingly probable, that I had then received such communication. And your Lordship must also have been conscious, that the exact period at which any information is received, is not in all cases, after the lapse of three or four months, so easy to be proved as your Lordship's assertion may have led the Jury to imagine. That more, however, might have been proved on this subject than was proved at the Trial, was afterwards evinced on my application for a new Trial: but as the additional Evidence then offered had not the effect of altering your Lordship's determination,

* I believe these were the very words used by me when the servant delivered the note, saying, "A gentleman, who is waiting, desired me to bring you this."

I have less reason to regret the negligence of my legal advisers in not suggesting the necessity of bringing it forward before. My brother's servant was in waiting at the Trial to be examined on the subject, but, for reasons wholly unknown to me, was not brought forward: and my brother himself was in London at the time, having been compelled to return to England by the illness in question; and was only prevented from appearing in Court to give evidence on the subject, by the enfeebled and dangerous state in which he then was, from the continuance of his disorder.

Your Lordship will recollect, that when I applied for a new Trial, it was proved by an official certificate of the surgeon of the regiment to which my brother belonged, that his illness commenced as early as the 1st of January last (p. 569); and therefore it did not only "appear that he was in fact upon the sick list," as admitted by your Lordship, but that he had been so upwards of seven weeks prior to the day of the Fraud—a period of more than seven times sufficient for the intelligence to have reached me; and therefore if it did "not appear that I had then actually received any communication upon the subject," the probability was so extremely strong, that it was hardly decent in your Lordship to reject my oath to the fact (p. 564), supported as it was by the Affidavit of my brother himself (pp. 568, 9). Your Lordship had not only my Deposition to the fact of having received a letter from my brother on the subject of his illness only three days prior to the 21st of February, but you had also my brother's Affidavit to the fact of his having sent it early in that month: and as it is possible, and even usual, for letters to arrive in London from the North of Spain* in

* My brother was then at Cambo in the South of France, whence letters for England were forwarded to the nearest ports in Spain, distant only a few leagues. The following are all in sight from that part of France, viz. St. Sebastians, St. Andre, Sancti, Guiteria, and Bilbao.

the course of five days, it was nothing extraordinary that a letter written *early* in February should have reached me prior to the 21st. Still your Lordship observed, that "this Affidavit was not even material to show that Lord Cochrane was in possession of his brother's letter previous to the morning of the 21st of February, so as to account for a connection existing in his mind between the note he on that morning received, and the state of his brother's health, which should induce him immediately on the receipt of it to return home,"† (p. 570). And in answer to my declaration (which I also made upon oath), that I received his letter on the Friday previous to the Fraud, your Lordship observed, "that was capable of being most distinctly verified," (p. 570). It should seem, however, that the task of discovering by what means such distinct verification might have been made, was transferred by your Lordship

† It appeared to me, on tendering my brother's affidavit, and other additional evidence on my application for a new Trial (though it does not so appear by the published account of the proceedings), that Lord Ellenborough, in the hasty manner in which he disposed of that evidence, *supposed* that the surgeon's certificate (dated the 12th of February), which was annexed to the Affidavit, had been sent to me inclosed in my brother's letter, and consequently that such letter could not have been written earlier than the 12th. Yet it was expressly stated in the Affidavit, that the certificate was granted to him, [not for the purpose of being sent to England,] but to be laid officially before a board of medical officers at Saint Jean de Luz, (p. 569); and I at the same time stated to his Lordship, that my brother had brought it home with him, (p. 558). The fact is, that the letter was sent several days before the certificate was granted; and although the precise date cannot now be ascertained (as the letter itself is not in existence), my brother has no doubt that it was sent between the periods of his first and second relapse, which, as appeared by the certificate, took place on the 1st and 7th of February. If the *sharp practice* of Lord E. had been sufficiently adverted to, my brother would, and could very conscientiously have sworn, that he sent that letter between the first and 7th of February; but as he could not recollect the precise day, and as we did not duly consider with whom we had to do, he made oath generally to its being sent *early* in that month.

to Sir Simon Le Blanc, who did not accomplish it till he was in the act of pronouncing Sentence. He then said, "If any such letter had been received, if it had come by a private hand, the person who brought it might have been called," (p. 594). But, suppose a person bringing me a letter from France had returned to the place from whence he came (as might very well have happened, between February and June), he "might" indeed "have been called," but he would not have come; and to what end should he have been called? Why, said Sir Simon, "to show the information which he had received," (p. 594); which I do not clearly understand; as the letter itself, and not the person who delivers it, is generally the repository of the information. Did the learned Judge imagine, since I, who received the letter, had it not to show, that I must have returned it to the person who delivered it? I admit, however, that Sir Simon meant that the bearer of the letter might have been called to prove the time of delivery; *distinctly to verify*, that he delivered me such a letter prior to the 21st of February; for as to the *information* itself, namely, my brother's illness, Sir Simon could hardly intend to insinuate a doubt on that subject, unless he was dissatisfied not only with my statement, but with the Affidavit of Major Cochrane, the surgeon's original certificate, the sick list itself, and your Lordship's and his own previous admissions.

But suppose the letter was not brought by a private hand (as in truth it was not), how then was the delivery on a particular day to be distinctly verified? "Why," said Sir Simon, "if it had been brought by a ship, or by post, the mark on the direction and the envelope of that letter would have given some explanation of it," (p. 594). But neither the mark on the direction, nor the envelope of a letter, nor the letter itself, is always to be found, or even in existence, four months after delivery. It would in general be difficult for me to produce almost any

letter received so long before. Some persons perhaps preserve all their letters; but there are others, of whom I could have proved myself to be one, who habitually tear up or burn almost every letter that is not likely to be of future importance. And how was I to foresee that the preservation of a private letter from my brother on the state of his health, was essential to the preservation of my own character? In the present instance, however, the letter was not destroyed by me, but by my brother Col. Cochrane, who has since reminded me that I sent it to him in Ireland; and who, after a diligent but unsuccessful search, concludes that he tore it up with a number of other letters and papers, previous to his return to England.

On rejecting my application for a new Trial, your Lordship assigned another reason for concluding that I had not received a letter from my brother on the subject of his illness, previous to the Fraud; which was, that no mention of any such letter appeared in my Affidavit of the 11th of March. "Your mind must have been drawn to this point," said your Lordship, "when you made your Affidavit," (p. 570). Now I readily admit, that if I had introduced the circumstance of the letter into the Affidavit, it would have been more precise and explanatory; and if it had been drawn up by a lawyer, it certainly would not have been omitted: but when I stated my apprehension that some accident had befallen my brother, it did not occur to me that I should ever be asked what particular reason I had for entertaining such an apprehension. Guilt, however, would have been as good as a lawyer on the occasion; and had I been conscious of swearing falsely, I must have anticipated some unlucky question of that nature, and could not have been so unguarded, as not to have provided for it by some pretence or another; and none so likely or obvious as the mention of Major Cochrane's letter, which (unless that

honourable officer too is to be suspected of perjury) must be admitted to have been sent to me early in February, and must surely be allowed to have been in my possession, if not prior to the 21st of that month, yet previous to the 11th of March, when I made the Affidavit. Had that letter, therefore, arrived subsequently to the Fraud, but previous to the Affidavit, it was as likely that my "mind" should "have been drawn to" it, as if I had received it sooner. And if, as assumed by your Lordship, I was forsworn in deposing that I returned home on the 21st, under the impression that some accident had befallen my brother, how came it that I did not corroborate the perjury by mentioning the letter, and deposing that I had received it previous to the 21st? If I had not scrupled one falsehood, how came I to boggle at a second, which was just at hand, to which my "mind must have been drawn," and which was essential to support the first? Besides, on applying for a new Trial, I did swear that I received the letter previous to the fraud (p. 564), and your Lordship assumed that I was again forsworn. How came it, then, that I did not do it in the first instance, when I made the Affidavit; when, if conscious of guilt, I must have been fully aware of the necessity of so doing?

If, however, as might reasonably be inferred from the manner in which Major Cochrane's testimony was received, or rather rejected, your Lordship did not consider such testimony as conclusive that any such letter actually was sent, the above reasoning may not perhaps have so much weight with your Lordship as with those who are better acquainted with my brother's character. If, then, the Major, in deposing to having sent me such a letter, must be supposed to have kindly perjured himself in my behalf (which also includes a supposition that my other brother, Col. Cochrane, in being ready to make oath that he afterwards received such

letter from me, is virtually guilty of similar turpitude), it is fair to inquire, how it comes that an earlier date was not assigned to the pretended letter? If there could be a doubt, as insisted upon by your Lordship, whether a letter sent from Cambo on the borders of Spain, in the beginning of February, would arrive in England before the 21st, it must have been known to Major Cochrane and myself, who had often crossed the Bay, and were in the habit of corresponding between the two countries. How then did it happen, if my brother's Affidavit was false, and fabricated for the purpose of a spurious defence, that the date of the pretended letter was not fixed in January instead of February?—A very early day, even in January, might have been assigned (if necessary), since the illness, as proved by the surgeon's official certificate, which was annexed to the Affidavit, commenced as early as the first of that month, (p. 569).

That an earlier and more definite date was not assigned to the letter in my brother's Affidavit, and that I should have sworn to its arrival on the 18th, without pretending to any recollection of its date, ought, I think, to have convinced your Lordship that there was as little disposition on my part as his to defend me at the expense of truth; and that so far as we knew we deposed, and no further. If, too, I had prevailed on my brother to make a false Affidavit, why did not I also persuade him to write a false letter? A letter, purporting to have been the original, with a perfectly convenient date, might readily have been forged and annexed to the Affidavit.

Once more, my Lord: If, prior to the 11th of March, I had received no intimation of my brother's illness, it was rather extraordinary that I should have hit upon the pretence of having returned home on the 21st, under the apprehension that some accident had befallen him; and no less remarkable that it should have so happened, and

been so clearly proved, that he was in fact in imminent danger at the time. It is clear that it was the knowledge of my brother's illness that was the cause of my apprehensions respecting him on the 21st of February, if they were real; or that furnished me with the pretence of those apprehensions, when I asserted them on the 11th of March, if they were feigned: but if the latter, I must, as I before observed, have felt the necessity of corroboration; which the same information that furnished the pretence would, by the obvious artifice of antedating the receipt of it, have also supplied: and after the words in the Affidavit, "concluding that some accident had befallen my brother," I could not have failed to have added, "from whom I had received information of his being afflicted with a dangerous illness." But, conscious of the truth of my assertion, I was unconscious that it needed explanation or support: I did not, and could not anticipate that it would ever be disputed. The argument, therefore, that my "mind must have been drawn to the subject of the letter when I made the Affidavit," is far more favourable than your Lordship intended, to the fact sworn by me in Court on the 14th of June (p. 564), that I was in possession of such letter previous to the Fraud.

One would have thought that the circumstance of my hastening home to receive intelligence, which at the moment I apprehended might be of the most affecting nature, without previously communicating my apprehensions to my servant, who could give me no information,* would not have appeared to your Lordship so exquisitely improbable as to call for reiterated question. Your Lordship however continued, "That his brother was in fact upon the sick-list appears, but not that he then knew

* See page 38 of this Letter; also his Evidence at the Trial, when he deposed, that he had never in his life seen the person who sent him with the note before that time, nor yet since, (p. 348.)

“ him to be so ; nor did he intimate to the servant that “ came, one word of apprehension about his brother, or “ any mention of his health, or of him, but came back “ immediately on receiving this note,” (p. 482). On this subject I have only to add, that if your Lordship really imagined that the sudden impression of being about to hear of the death of a brother, would affect me so slightly as to permit me to enter into any idle conversation on the subject of my apprehensions, your Lordship knows as little how to appreciate my fraternal feelings as any other parts of my character.

Sir Simon Le Blanc, in pronouncing Sentence, observed on the subject of the note received on the 21st, that “ what the contents of that note were, as the note “ has not itself been produced, we have no Evidence,” (p. 592). The Affidavit, however, was made Evidence; and by the Affidavit it appeared, that the object of the note was merely to request my immediate return. The note was not produced, because it was not preserved; and it is I only who have reason to regret that it was not. I do not regret it on account of any suspicion that could attach to its non-production, because no reasonable person could imbibe a suspicion from that circumstance. For what purpose, as I observed in the House of Commons, should I be careful of a scrap of paper, of which the object was merely to solicit an interview which I was immediately going to grant? But I regret it, because the note itself would have shewn the consistency of, and strongly confirmed the truth of my statement: for, as I informed your Lordship on my second application for a Re-hearing, the writer assigned as his reason for requesting my immediate return, *that he had something to communicate which would affect my feeling mind* (p. 559); which words, though used by De Berenger in reference to his own distresses, produced a connection in my mind between the apprehended death of my brother (which I

had been prepared to expect by his own letter) and the subject of this supposed officer's visit.

I wonder it never struck your Lordship, nor the learned Judge who passed Sentence, that if I had been fraudulently connected with De Berenger, it would have been hardly possible not to have resorted to so easy, so obvious, and so expedient an artifice as that of procuring him to write, in the interval between his arrest and the Trial, such a note as would have accorded with my statement, in order to produce it as the original note of the 21st of February. The contrivance might indeed have been suspected, but it could hardly have been proved; and with respect to suspicion of fabrication, your Lordship, I have no doubt, would as soon have attached it to the original note itself, if it had been preserved and produced. The absence of an official "mark on the direction and the envelope" (p. 594), might have been urged in one case as well as in the other: and if the bearer of the note had been called "to shew the information which he had received," he probably could only have told your Lordship that he had neither violated the note to get at that information, nor could identify the paper on which it was written.

To proceed with your Lordship's remarks: "Now, "with the acquaintance he had with De Berenger," said your Lordship, "no doubt such application had been made to get him appointed as is proved; and he must have been, one would suppose, familiar with his handwriting; and if so, he could have no doubt who was the person from whom he received this note, and whom he was to meet when he should get home," (pp. 482, 3). "One would suppose," that since the application was "proved," there could be "no doubt" of it, even if I had had no "acquaintance" with him at all. But it is not the absurdity, but the injustice of this passage that I am desirous to expose. In the first place, I am sure that

every one may perceive, that, by the word "*acquaintance*," as introduced by your Lordship, nothing less than a very intimate acquaintance was intended to be understood: although your Lordship was well aware, that there was no other evidence of intimacy between De Berenger and me, than the hearsay evidence (either real or pretended) of Mr. Le Marchant, which your Lordship admitted was no evidence at all, except only against De Berenger (p. 207, and pp. 503, 4); and your Lordship could not have forgot, that the evidence of Le Marchant, though in some respects supported by that of Mr. Murray (how truly I shall consider hereafter), was, in the particular of intimacy, contradicted by him, (pp. 215, 6). Secondly, your Lordship refers the applications which were made in favour of De Berenger, to this supposed intimacy; thus insinuating, that such applications were made by me, or at my instigation;* which is as false in fact as it was unfounded in evidence. The applications were proved to have been made by sir Alexander Cochrane (pp. 340, 2, 4); and it appeared that Mr. Johnstone had interested himself in them (p. 377); but there was no proof that I had ever interfered, or interested myself in any application in De Berenger's behalf. It was proved, indeed, by my own voluntary statement of the conversation which passed between him and me on the 21st of February, but not otherwise, that there had been some previous conversation on the subject, during which he had shown me certificates from persons of distinction; and that he had understood from such conversation, that I had no objection to receive him into the Tonnant. And thirdly, although the application made by Sir A. Cochrane on behalf of De Berenger was a circumstance very important to my Defence, adding greatly to the probability of my statement, and accounting for the conduct of De

* In the next page, his Lordship goes beyond insinuation: "There is no doubt," said Lord E. "that Sir Alexander Cochrane had, on some application from Mr. Cochrane Johnstone, or *Lord Cochrane*, applied for him," (p. 483).

Berenger in presuming to call on me to request a passage to America, without having recourse to the supposition that I must necessarily have known that he had been engaged in a Fraud, or even that I was upon terms of intimacy with him; yet your Lordship never offered it to the Jury in that view, but introduced it as above quoted, very much out of its place, as a proof of my intimacy with De Berenger, of my familiarity with his hand-writing, of my knowledge of the writer of the note, and whom I was to meet when I should get home; and consequently, the falsehood of my Affidavit, and my participation in the Fraud. There is not in the whole course of your Lordship's Charge, a more injurious or complicated instance of misrepresentation than in the passage above cited.

Fortunately, however, your Lordship's conclusions, though they served to impose upon the Jury, were as remote from reason, as their tendency from justice. There is as little logic in such inferences, as truth in the premises from which they were drawn. The acquaintance I had with De Berenger was extremely slight; and nothing more than a very slight and very recent acquaintance was proved at the Trial; but if the acquaintance had been more intimate and of longer standing, it by no means follows that I must have been familiar with his hand-writing. A personal intimacy may subsist without any correspondence by letter, or the occurrence of any transaction in writing. Your Lordship, however, without the slightest proof of long or intimate acquaintance, and without any proof that I had ever seen De Berenger write (which I never had), or ever previously seen his hand-writing (which I had not more than once or twice), instructed the Jury to suppose that I must have been familiar with it; and "if so," that I "could have had no doubt who was the person from whom I received the note, and whom I was to meet when I should get home," (p. 483).

I observe that the words "if so," like several other words in the course of your Lordship's Charge, are printed in italics; whence "one would suppose" that your Lordship has a sort of an indescribable faculty of speaking in that character, as I am assured that no sworn short-hand writer is allowed to be a judge of emphasis, or entitled to change a single word, or even vary the appearance of a word.* I may perhaps be told that the italics were supplied by your Lordship, and that the right of introducing them is inseparable from the privilege of revision; or it may be, that these little words were accidentally omitted by the short-hand writer, as appears to have been the case in similar instances in other reports: and "if so," it was certainly critically proper, and perfectly candid in your Lordship, to give a peculiar character to the words *restored*. However this may be, I have still to contend, that even had your Lordship proved, instead of *supposed*, my familiarity with De Berenger's hand-writing, it would not follow that I could have no doubt who was the person from whom I received the note; for it is very possible to receive a hasty and agitated scrawl from a person with whose general hand-writing one is familiar, without immediately recollecting the writer. It is marvellous that it did not occur to your Lordship, that De Berenger might have written this note in great haste and agitation. When it was necessary to shew that the Dover letter was written by De Berenger, your Lordship referred and replied to the idea "thrown out" of its being written in great haste; which it should seem was an argument (though I can no where find it), that it could not be written in a disguised hand, and therefore not by De Berenger, since it was not in his ordinary hand-writing; which your Lordship answered by conjecturing that it might have

* There is no mark in Mr. Gurney's "System of Short-Hand" to denote italics; not even in the 13th Edition.

been prepared beforehand,* (p. 453). But with respect to this note, though it could not have been prepared beforehand, but was proved to have been written at my house on the spur of the moment, your Lordship did not even mention the possibility of its being written in great haste. Either the idea of great haste had not in this instance been "thrown out," or it did not occur to your Lordship, or it occurred unaccompanied by any conjecture that would have refuted its favourable tendency; and, "if so," your Lordship very prudently suppressed it. In reference to the Dover letter, your Lordship also observed, that "a person would certainly write a disguised hand at that time, if ever he did in his life," (p. 368). Now it was equally obvious, and as much your Lordship's duty to observe, in respect to the writing of this note, 'that a person would certainly write an agitated, and scarcely legible scrawl at that time, if ever he did in his life;' particularly if addressing, not an accomplice, but a stranger to his offence. Just returned from the commission of a Fraud of great danger and magnitude, and under the necessity of instantly practising another fraud upon me, in order to escape the ruinous consequences of the former, the moments devoted to the writing of that note must, "one would suppose," have been the most hurried and agitated of "his life;" and such agitation must have occasioned a greater variation from his general hand-writing, than the most laboured attempt to disguise it.

If there can be a doubt as to the iniquity of the passage which I have just been considering, let it be remembered, that your Lordship insinuates a greater degree of personal intimacy between De Berenger and me than

* If such an idea was really "thrown out," it was certainly fair game; but the objection is so greatly overmatched by the answer, that one might almost conjecture that his Lordship *started* it himself, for the purpose of *running it down*.

was proved or subsisted; and in order to impress the Jury with a belief of such intimate acquaintance, you abruptly connect it with the application which had been made to the Admiralty in his favour (in itself a circumstance highly favourable to my Defence), and most untruly and injuriously represent me as the author of such application. Having thus established an intimate acquaintance with his person, your Lordship had no hesitation in supposing that I must have had an equally intimate acquaintance with his hand-writing; which no where appeared in Evidence, and which in truth I did not possess, and which is not the necessary consequence of personal intimacy. And from a knowledge of hand-writing thus obtained, your Lordship concluded that I must have known from whom I received the note, although I had sworn I did not, and although it was written under such circumstances as would, in all probability, have occasioned a great variation from the general character of his hand-writing, even if I had been familiar with it. And lastly, that I must have known whom I was to meet when I should get home; and, "if so," the Jury could have no doubt that my Affidavit was all false, and the complicated guilt of fraud and perjury clearly made out! If such fallacious and criminating inferences, from the most chimerical suppositions, are to be gravely submitted by a Judge to a Jury, as resulting from the Evidence, innocence is no where in such imminent jeopardy as in a Court of *Justice*.

On my application for a new Trial, I stated to your Lordship that I expected no communication from De Berenger; that I was not familiar with his hand-writing; and that I had never received more than two notes, and perhaps only one note* from him, prior to the 21st of February, (pp. 558, 9). These facts were in direct oppo-

* I have lately found De Berenger's note, "which related to a drawing of a lamp" (p. 558); and I am confident it is the only one he ever sent to me previous to the 21st of February. It was written

dition to your Lordship's suppositions, and for that reason, I suppose, were passed over as unworthy of notice. If, however, after all, I have really been in the habit of corresponding with De Berenger, he is probably in possession of some of my letters; and, "if so," there is no doubt that revenge for my having exposed him to conviction, and the malice of disappointed extortion, will

sometime in January, but has no precise date. As this note was the only means I had of being "*familiar* with his hand-writing," and as the style of it is elucidatory of "the acquaintance I had with him," I here insert it. It also tends to show that I was neither acquainted with his residence nor with that of *his Solicitor*.

"My Lord;

Wednesday Evening.

"I avail myself of Mr. Tahourdin's return to town, to convey to your Lordship my anxiety on account of the delay which I have given to your wishes, and I have the honour to assure you, that I should have paid you my respects ere this, had I not experienced the misfortune of a severe hurt, occasioned by some high steps falling with me, by which accident, besides general contusions, I have received an injury in my leg, which in pain and inconvenience is equal to a broken limb.—I have ventured, my Lord, to trouble you with these particulars, to lessen in some degree the blame I have incurred; and I trust that in your goodness you will excuse my not having completed the first design, which you were pleased to give me so much time for. I hope in few days to be sufficiently recovered to come to town,* when I shall submit the same for your opinion: in the mean time, should any thing occur which your Lordship may wish to signify to me, I shall not fail to receive it with other papers, if you will please to direct it to be left for me at Mr. Tahourdin's, No. 8, King's-Bench Walk, Temple.—Apologising to your Lordship for this hasty note on account of great pain, I beg leave to close with assurances of the great respect with which I have the honour to subscribe myself,

"My Lord,

"Your Lordship's most obedient

"and very humble servant,

"C. R. DE BERENGER."

* De Berenger was then in the rules of the King's-Bench, which at that time I did not know, and which he probably did not wish me to know.

prompt him to produce them, and afford your Lordship every facility of substantiating your inferences as to personal intimacy, and familiarity with hand-writing.

Your Lordship proceeded : " But he says, ' I found ' Captain De Berenger, who, in great seeming uneasiness, ' made many apologies for the freedom he had used, ' which nothing but the distressed state of his mind, ' arising from difficulties, could have induced him to do ; ' all his prospects, he said, had failed, and his last hope ' had vanished of obtaining an appointment in America. ' He was unpleasantly circumstanced on account of a ' sum which he could not pay ; and if he could, others ' would fall upon him for full £8,000. He had no hope ' of benefitting his creditors in his present situation, or of ' assisting himself. That if I would take him with me, ' he would immediately go on board and exercise the ' sharpshooters, (which plan I knew sir Alexander ' Cochrane had approved of) : " and here your Lordship stopped to remark, " And there is no doubt that Sir " Alexander Cochrane had, on some application of Mr. " Cochrane Johnstone, or Lord Cochrane, applied for " him ; but that for reasons not communicated to us, such " application had not been successful, and it had not " been thought fit to appoint him," (p. 483). It appeared by the Evidence, as I observed before, that Mr. Cochrane Johnstone had taken an interest in the application for De Berenger ; but your Lordship had no other warrant than your own assumed right to do wrong, for linking my name with that of Mr. Johnstone in reference to any such application.

- From the concluding part of the sentence last cited, " but that for reasons not communicated to us, such " application had not been successful, and it had not " been thought fit to appoint him," one might almost suppose that your Lordship wished to have it thought

that there was some mystery in the reason for rejecting the application, of which the defendants had thought it prudent to avoid an explanation. The fact, however, is, that Mr. Brougham, who officiated as one of my Counsel, enquired of one of the witnesses, "whether any difficulties were started to the application, and what objection was made to it?" When your Lordship immediately interfered, and prevented the reply; observing, among other things, that "what the difficulties were is not at all material; it would be going into that with which we have nothing to do" (pp. 342, 3).

Your Lordship continued to recite the Affidavit, as follows: "That he had left his lodgings, and prepared himself in the best way his means allowed. He had brought the sword with him which had been his father's; and to that, and to Sir Alexander, he would trust for obtaining an honourable appointment. I felt very uneasy at the distress he was in, and knowing him to be a man of great talent and science, I told him I would do every thing in my power to relieve him; but as to his going immediately to the Tonnant, with any comfort to himself, it was quite impossible; my cabin was without furniture; I had not even a servant on board. He said he would willingly mess any where. I told him that the ward-room was already crowded; and besides, I could not with propriety take him, he being a foreigner, without leave from the Admiralty. He seemed greatly hurt at this, and recalled to my recollection certificates which he had formerly shown me from persons in official situations: Lord Yarmouth, General Jenkinson, and Mr. Reeves, I think, were amongst the number. I recommended him to use his endeavours to get them, or any other friends, to exert their influence, for I had none; adding, that when the Tonnant went to Portsmouth, I should be happy to receive him; and I knew from Sir Alexander Cochrane,

" that he would be pleased if he accomplished that
 " object. Captain Berenger said, that not anticipating,"
 now this is very material, " any objection on my part,
 " from the conversation he had formerly had with me, he
 " had come away with intention to go on board, and
 " make himself useful in his military capacity" (pp.
 483, 4). Your Lordship says, that this last sentence is
very material, by which I understand your Lordship to
 mean that it has a materially criminating tendency; and
 yet, according to the context, what does it amount to?
 That, understanding from Sir Alexander Cochrane (who
 considered the exercise of the sharpshooters best adapted
 to the service in America) that he would be pleased if
 De Berenger succeeded in his object of obtaining per-
 mission from the Admiralty to go out in the Tonnant, I
 had so expressed myself, in a previous conversation with
 De Berenger, as to leave him no room to anticipate (in
 his own opinion at least) any objection on my part. I
 certainly did not foresee that my Affidavit would ever
 become the subject of your Lordship's criticisms, or I
 should not have failed to state that this previous conver-
 sation arose unexpectedly, on my part, upon one of the
 few occasions on which I had seen De Berenger at Mr.
 Johnstone's table: when De Berenger took an oppor-
 tunity of shewing me the above-mentioned certificates,
 and of expressing his anxious desire to go out in the
 Tonnant; to which I have no doubt that I replied, that I
 should be happy to receive him (by which I certainly
 did not mean without proper authority), and to shew him
 any attention in my power. This was the effect and
 substance of this material conversation; and could I have
 foreseen the necessity of being thus particular, I think
 your Lordship would have found it difficult to infer from
 such a conversation, a degree of intimacy between De
 Berenger and me, so "*very material*," as to justify a
 conclusion, that I must needs have been a party to his
 most criminal transactions.

De Berenger appeared to me, at that time, in the light of a man of talent and unmerited misfortune. As such, he was introduced to me (and I believe also to Sir Alexander Cochrane) by Mr. Johnstone; who, if he then knew the real character of the man, took very good care to conceal that knowledge: and if Sir Alexander Cochrane was deceived as to his character, I was not less so.

I presume that there never was a case, resting entirely on circumstantial evidence, so clear against the Defendant in a cause, as not to furnish at least one circumstance from which an inference more or less favourable might fairly be drawn. And since your Lordship exercised the privilege of drawing your own conclusions in my case, to an extent that even in the practice of your Lordship never was preceded (if we except the Case of *Perceval against Mitford*), I do think that I have a right to complain, that there does not occur, in the whole course of your Lordship's Charge, even the shadow of a suggestion in my favour.* I can conceive that there

* It is equally remarkable that, during the examination of the witnesses, his Lordship was frequently utterly unable to conceive how any information sought by the Defendant's counsel could lead to any result favourable to those Defendants: he could not comprehend how any testimony in the cause could prove any thing in their favour. There is a very striking instance of this at p. 170, and another at p. 344. In the first of these instances, the counsel having ascertained from Mr. Fearn that a man may dispose of *Omnium* on account which he has not previously purchased, and that any person, knowing that the good news would soon turn out to be all invention, might have sold a million of Stock without possessing sixpence, he proceeded to ask whether the Defendants had sold any Stock which they had not purchased before? Lord E. interfered: "Are you not putting this gentleman in a situation of peril?" Mr. Serj. Best: "If he admits it." Lord E. "Why should you place him in a situation to deny or affirm? *this does not affect the charge.*" Mr. Serj. Best however was allowed to repeat the question; and after a caution from the Judge to the witness not to criminate himself, he answered, "They did not:" on which his Lordship observed, "*that is not imputed to*

is, or at least has been a Judge, who, if commenting on such a statement as that contained in my Affidavit, would have submitted to the Jury, that it was "very material" that most of the circumstances that would admit of an

"them." Lord E. could not perceive how any thing that was not imputed, could be an argument against that which was imputed : yet every body but Lord E. can perceive, that any person acquainted with the imposition might have turned it to a better account, by selling Stock they had not purchased, than by limiting their sales to the Stock which they had purchased. And therefore it was certainly an argument of some weight in favour of the Defendants, (of Mr. Butt, at least, who was considered well acquainted with the nature of Stock-transactions), that they sold only the Stock which they had previously bought, the same as others who were not suspected of participation. Mr. Serj. Best, perceiving the dullness of his Lordship's comprehension on this point, observed, "The use I mean to make of it, I have no objection to state now:" but his Lordship being perfectly satisfied with his own ignorance on the subject, replied, "No, you need not; I leave it entirely to your judgment," (p. 170).—In the other instance, after the witness (Mr. Goulburn) had proved that Sir A. Cochrane had applied to the Colonial Department in behalf of De Berenger, (Lord Melville and Colonel Torrens having previously proved similar applications to the Admiralty and Commander in Chief), Lord Ellenborough observed, "You have laid this basis, that there had been some application, and that it had been in contemplation that he should go out as connected with the service?" Mr. Park: "That is all we wish; we want to shew a connexion with the Cochrane's, without this illicit connexion." Lord Ellenborough: "*No doubt there had been an intimacy and connexion; whether for good or ill, is the question.*" Mr. Serj. Best: "And this confirms in terms the statement contained in the Affidavit of Lord Cochrane," (pp. 344, 5). His Lordship had made up his mind that Sir Alexander Cochrane's applications for De Berenger had been made at my instigation, and he considered it important to admit evidence of such applications, as proof of an intimacy "*for ill*" between De Berenger and me; but the utility of the proof it afforded in confirmation of the truth of my statement, he could not conceive. And how it could be possible that De Berenger, presuming on such applications, should have visited me in the hope of obtaining a passage to America, and with no other ostensible object, was utterly beyond the bounds of his comprehension. And yet any other person may, I am sure, per-

inculpatory construction were such as might easily have been suppressed, and in all probability never could have been known, if the Defendant had not voluntarily divulged them.

It was in evidence, for the Affidavit was evidence, that De Berenger had thought it necessary to shew me certificates from Lord Yarmouth and others to his character and conduct: and the fact is indisputable; for if I had not been informed of, and even actually seen such certificates, I could not have been certain that such were in existence: and if I had not been certain, it would have been madness to make an assertion which Lord Yarmouth, and the other gentlemen mentioned in the Affidavit, might possibly have come forward to contradict. Now, I apprehend that the production of these certificates was the only important circumstance attending that conversation which your Lordship characterized as *very material*; and it was in that part of the Affidavit, where De Berenger is described as recalling those certificates to my recollection, that your Lordship might with more propriety have introduced the remark, "Now, this is very material." 'for if this be true,' your Lordship might have added '(which it is for you, gentlemen of

ceive that it is very possible that if no such applications had been made by Sir Alexander for De Berenger, he might have had no pretence for coming to my house on the morning of the Fraud; and that, if he had not so come, there could have been no reasonable ground to suspect me of the crime charged in the Indictment. During the Examination of Col. Torrens on the subject of one of these applications, Lord Ellenborough observed, "I do not know to what point this applies?" *Mr. Brougham*: "Merely that it confirms the statement made by Lord Cochrane, and shews a connexion between the different parties, consistent with that statement." *Lord Ellenborough*: "It shews that he was acquainted with Sir Alexander Cochrane, and that he recommended him to the appointment." His Lordship could not perceive that it proved any thing more!

' the Jury,* to consider), there could not, one would sup-
 ' pose, be that degree of familiar intercourse between
 ' these parties as must have subsisted between the prin-
 ' cipal and the confidential agent in a crime of this na-
 ' ture. Certainly, if De Berenger had rendered any im-
 ' portant services to Lord Cochrane, and those services
 ' were of a criminal character, they would have pleaded
 ' infinitely stronger for Lord Cochrane's good offices in
 ' return, than all the testimonials in the world to his
 ' good character from other people. There is so great a
 ' disparity in the strength, and so great a repugnance
 ' between the nature of the two claims, that if the first
 ' had existed, it is not at all likely that he should have
 ' endeavoured to recommend himself by the other. One
 ' can hardly conceive De Berenger in the act of solicit-
 ' ing the patronage of Lord Cochrane on the plea of
 ' having rendered him such services as only one swindler
 ' could render to another; and then, as a further induce-
 ' ment, gravely producing or referring to a certificate, of
 ' which the only effect could be to shew, that Lord Yar-
 ' mouth did not think him so great a knave as Lord
 ' Cochrane knew him to be! And when it is considered,
 ' that, notwithstanding Lord Cochrane was witness to the
 ' intimacy between his uncle, Mr. Johnstone, and this
 ' man; and knew that his other uncle, Sir Alexander
 ' Cochrane, under whom he himself was about to serve,
 ' had been impressed with the most favourable opinion
 ' of him, had endeavoured to procure him an appoint-
 ' ment under his command, and was anxious that his
 ' nephew should promote his wishes; yet De Berenger,
 ' knowing all this, was so little conscious that Lord
 ' Cochrane was under any obligation to serve him, and
 ' so uncertain of his inclination, as to feel himself under
 ' the necessity of recommending himself to his Lord-
 ' ship's notice by the formal production of certificates

* It was in evidence, and was uncontradicted.

‘ to his merits and behaviour; one can hardly suppose
 ‘ that there was any criminal connexion between these
 ‘ parties, or any degree of intimacy or cordiality.’ I
 think that your Lordship might with propriety have
 shown this side of the case to the Jury, as well as the
 other.

In reference to the evidence of Mr. Le Marchant, on
 the subject of my acquaintance with De Berenger, I
 have only to observe, that it is of no importance whether
 De Berenger, in conversation with Le Marchant, really
 pretended to an intimacy with me, or whether Le Mar-
 chant made a false report of such conversation. The in-
 famous letters which I received from both those persons,
 and laid before the public, demonstrate that they are both
 alike utterly unworthy of credit.* I am sure that nothing
 that either of these persons could invent, would be be-
 lieved against any other individual; and I do not so far
 mistrust the candour and discernment of the public, as to
 imagine that they attach so much weight to their state-
 ments against myself, as to render it necessary for me to
 offer any formal refutation. And therefore, when I find
 in the Trial (p. 206), that Mr. Le Marchant swore that
 he heard Mr. De Berenger frequently mention particular
 intimacy of dining, breakfasting, and supping with me,
 I think it sufficient to affirm, that he never either dined,
 breakfasted, or supped with me at my residence, on any
 occasion in his life. I have met him at dinner two or

* In De Berenger's letters of the 3d and 11th of July, he insinuates
 (I need not add, falsely) that I had sent, or was privy to the sending
 of some anonymous letters, which he had or pretended to have re-
 ceived; and he says, "Anonymous letters I despise." Since that
 period I have received several anonymous letters, or letters with ficti-
 tious signatures, in a disguised hand; but with here and there a word,
 evidently betraying the hand-writing of Mr. De Berenger; and on
 one occasion he so far forgot [himself as to pen the superscription
 entirely in his ordinary hand-writing.

three times; but not more, at Mr. Cochrane Johnstone's, and never by any previous arrangement, and always in company with various persons, and once at Mr. Basil Cochrane's with a large party, but no where else.

Again, when I find in the same page of the Trial, that Mr. Le Marchant swore that he heard from De Berenger that I had told him I had kept for him a private purse, in which I had placed a certain percentage out of the profits of his Stock suggestions, I think it barely necessary to deny it; and am satisfied with referring to Mr. De Berenger's letters to me, in which he accuses me of participation in the Fraud, and complains that not even the cheap reward of thanks has been his. If De Berenger is to be believed, the private purse must be the fiction of Mr. Le Marchant; unless it is to be supposed that I held out the temptation of the purse, and withheld the contents: but the hypocrisy and ingratitude of such conduct would have been too flagrant to escape the particular and express indignation of Mr. De Berenger, whose letters, after his conviction, particularly that of the 11th of July, will convince even those who believe him (if any such there are), that he is not to be suspected of the slightest bias to forbearance.

I dismiss the evidence of Mr. Le Marchant, because even your Lordship judged it of so little importance as not to think it at all necessary to state it, (p. 503). It is true that you immediately changed your mind, and recapitulated every word of it,—(but no matter); and also because your Lordship admitted that it was only evidence against De Berenger (p. 504); although I cannot but suspect that your Lordship must have borrowed it for a moment, to prove the intimacy, that proved the familiarity with hand-writing, that proved all the rest. And further, because I believe that Le Marchant's evidence would be universally discredited, if it were not in some

measure collaterally supported by that of the Honourable Alexander Murray; and therefore I shall turn my attention to the Evidence of the last-mentioned gentleman. I have already observed, that on the question of his intimacy, his evidence is at fatal variance with that of Le Marchant; for he says, "I knew there was a very particular intimacy between De Berenger and Mr. Cochrane Johnstone; but I did not understand it was with Lord Cochrane at all—I understood he was a more recent acquaintance. De Berenger was constantly with Mr. Cochrane Johnstone; he was there almost every day. I do say that his acquaintance with Lord Cochrane was recent. He did not state any thing with regard to his visits to Lord Cochrane." (pp. 215, 216). And here I cannot help observing upon your Lordship's manner of stating this Evidence: "I knew there was a very particular intimacy between Mr. De Berenger and Mr. Cochrane Johnstone. I understood Lord Cochrane was a more recent acquaintance; but that there was some acquaintance. I understood that there was a great acquaintance between him and Mr. Cochrane Johnstone, and that he was with him almost every day." (p. 506). Mr. Murray understood from De Berenger that he constantly visited Mr. Johnstone, but heard him say nothing in regard to any visit to me: your Lordship is careful to state the former part of this Evidence, and equally careful to say nothing about the latter. Mr. Murray did not only speak of my acquaintance with De Berenger being more recent than that of Mr. Johnstone's, but positively that it was recent, of which your Lordship says nothing. But the omission of the words, "*I did not understand that the intimacy was with Lord Cochrane AT ALL,*" and the emphatic interpolation, "*but that there was some acquaintance,*" are striking instances of misrepresentation. Your Lordship's statement of the Evidence (on which you instructed the Jury to decide) (p. 448), was calculated, in this instance (at least), to make a very

different impression from the *Evidence* itself. The purport of Mr. Murray's Evidence is, that there was the least possible acquaintance between De Berenger and me: the effect of your Lordship's statement of that Evidence is, that there was sufficient for any evil purpose.

That part of the Evidence of the Honourable Alexander Murray which appears to accord with the statement of Le Marchant, was introduced as follows: "Q. Had you at any time any conversation with Captain De Berenger previous to the 21st of February, with respect to Lord Cochrane and Mr. Cochrane Johnstone? A. Towards the end of January I think, or perhaps the beginning of February.—Q. What was the subject of these conversations? A. It happened one Sunday, between one and two o'clock; Mr. Harrison called upon me, and we were conversing about a pamphlet he was writing.—Q. That Mr. Harrison was writing? A. Yes; it was relative to the trial between Mr. Basil Cochrane and Mr. Harrison.—Q. That impressed the day upon your recollection? A. Yes." (p. 214).

And here I have to remark, that this proves an acquaintance between the hon. Alexander Murray and Mr. Harrison; who is the person who was defeated in a most villainous attempt against the character and person of my uncle Mr. Basil Cochrane, and who in consequence became the implacable enemy of the whole family; and as such, was selected and employed by the Stock Exchange* to collect Evidence, and subpoena the witnesses on the late Trial. Mr. Serjeant Best had the following remark on this subject: "Not only has Mr. Basil Cochrane's servant been subpoenaed by the Stock Exchange to prove who are the persons dining at his

* The gentlemen who gained "nothing but honour by the Verdict."—(Mr. Bish's advertisement).

“ house, but the females* of this family have been
 “ subpoenaed to this place, and kept here for the purpose
 “ of proving the same facts which might have been ad-
 “ mitted at any hour of the day ; and not only subpoenaed,
 “ but that subpoena sent by a person whose presence was
 “ the most insulting of any one who could have been
 “ selected in this town, and who could have been
 “ selected for no other purpose than that of offering
 “ insult to the members of this family.” (pp. 281, 282).

To return to Mr. Murray's examination :

“ Q. Did Captain De Berenger come in that day ?

“ A. Yes ; he came in during the conversation, and
 “ joined in it.—Q. Did any thing pass from Captain
 “ De Berenger on that day respecting Mr. Cochrane
 “ Johnstone and Lord Cochrane ? A. I at that time
 “ knew he was employed by Mr. Cochrane Johnstone.

“ —Q. From whom did you understand that ? A. From
 “ Mr. De Berenger himself, that he was employed by Mr.
 “ Cochrane Johnstone in planning out a small piece of
 “ ground behind his house in Alsop's Buildings.—

“ Q. What passed at that time about Mr. Cochrane
 “ Johnstone ? A. He mentioned that there was a trans-
 “ action going on.—Q. Does the circumstance of the
 “ pamphlet bring back to your recollection what Sunday
 “ it was ? A. I cannot state the day of the month, but
 “ it was towards the end of January or the beginning of
 “ February.—Q. State what Mr. De Berenger then said ?

“ A. He stated that they had had a plan in view.—

“ Q. Who had ? A. That De Berenger had, with Mr.
 “ Cochrane Johnstone and Lord Cochrane ; that, provided
 “ it succeeded, it would put many thousand pounds in
 “ the pocket of Mr. Cochrane Johnstone and Lord

* Harrison introduced himself to my aunt, Lady Cochrane, under a false name, and sat a considerable time in the drawing-room, conversing on the subject of the Fraud, and then presented her with a subpoena.

“ Cochrane.—Q. Upon hearing this, did either you or
 “ Mr. Harrison ask Captain De Berenger what the plan
 “ was? A. I did, and he declined answering it: I said,
 “ “ Is it the plan with regard to Ranelagh, which it was
 “ “ proposed to build in Alsop’s Buildings, on Mr. Coch-
 “ “ rane Johnstone’s land?” and he said, ‘ No, it is not; it
 “ “ is a far better plan.’ ” (pp. 214, 215). This is the *hearsay*.
 Evidence of the honourable Alexander Murray, which has
 been as repeatedly and as confidently quoted in the
 newspapers, and other publications, to prove that I was
 a party to the Fraud, as if it had been previously proved
 that De Berenger could not state untruths. It is now so
 notorious that he can, not only by compulsion in his own
 defence (as he himself confesses),* but voluntarily, and by
 way of attack, that I should be sorry to be obliged to
 acquit him of falsehood in this instance, at the expence
 of the honourable Alexander Murray, who, I sincerely
 believe, is truly penitent for the Evidence he was pre-
 vailed on to give by the Stock Exchange. It is due,
 however, to myself, to annex to this Letter the state-
 ments of Richard Gurney, Esq. and Lieutenant Prescott,
 on this subject, to which I refer your Lordship and the
 public. And in further proof that my name has some-
 times been injuriously and unjustly united or confounded
 with that of Mr. Cochrane Johnstone, I also subjoin the
 substance of a correspondence with Joshua Grigby, Esq.,
 and a letter from Mr. Jones, the Marshal of the King’s
 Bench, inclosing copy of a letter from Mr. Johnstone to
 Mr. Jones, and Mr. Jones’s answer: all of which I conceive
 are particularly entitled to your Lordship’s consideration.

To return to the Charge: On the next passage in the
 Affidavit, in which it is stated that De Berenger, in re-
 ference to the advice I had given him to apply to Lord
 Yarmouth and others to exert their influence with the
 Admiralty, observed, that “ he could not go to Lord

* In his letter of the 11th of July.

"Yarmouth, or to any other of his friends, in this dress,"
 your Lordship made the following observations: "What
 "is the dress that Lord Cochrane represents as then
 "belonging to him? A green dress? Had he a green
 "dress? He must have had that dress with him in which
 "he had come in the coach. He says, that would excite
 "suspicion: why, if he had really a green uniform, that
 "would not have excited observation or suspicion—it was
 "the very uniform he ought to have worn. But if it was
 "that in which he had got out of the coach, and it does
 "not appear that he had any means of shifting himself; if
 "he had on an aid-de-camp's uniform with a star, and
 "so presented himself to Lord Cochrane, how could
 "Lord Cochrane reconcile it to the duties he owed to
 "society and to government, and to his character as a
 "gentleman and an officer, to give him the means of
 "exchanging it? It must be put on for some dishonest
 "purpose; this red coat and star, and all this equipment,
 "must have appeared most extraordinary, and must have
 "struck Lord Cochrane most forcibly, if he was not
 "aware of the purpose for which it was used," (p. 484).
 As he had *not* on an aid-de-camp's uniform with a star;
 as he did *not* so present himself to me; as it does not
 now depend on my Affidavit, nor the rejected Evidence
 of my servants; but is proved by the testimony of two
 respectable tradesmen, men wholly uninfluenced, whom I
 never saw, and with whom I had had no communication,
 either directly or indirectly, that De Berenger quitted
 the post-chaise and entered the hackney-coach, which
 brought him to my house, in a *green* dress, the dress in
 which, as I have sworn, he made his appearance before
 me; and as the truth of my oath to the fact is therefore
 fully established, and as it was in evidence before your
 Lordship, and as there was no evidence at all to De
 Berenger's appearance before me in any other dress,
 the real question is: *How could your Lordship reconcile*
it to the duties of your office—to the investigation of

truth, and justice to the party accused, and to your character as a man and a judge, to give the jury the means of mistaking eloquence for evidence, and of exchanging the influence of testimony for the delusion of oratorical invective? "This red coat and star, and all this equipment, must have appeared most convincing, and must have struck the Jury most forcibly, if they were not aware of the purpose for which it was used."

It is not difficult, I think, to shew, that upon the Evidence then before the Jury, your Lordship was not justified in the use of any part of the language which I have above recited, admitting it to be the language actually used by your Lordship; and that there is not so much as an *if* presented to the public, that was not previously presented to the Jury. In the first place, I do not think that your Lordship was entitled to say, "that he must have had that dress with him," (by which is evidently meant *upon* him), "whatever it was, in which he had come in the coach." I may now very readily admit that he *had* that dress upon him in which he had come in the coach, because he came in the coach in a green dress: but I deny the impossibility (implied by your Lordship's "*must*,") of his appearing before me in any other dress than that in which he had come in the coach; because he brought with him the means, and had sufficient opportunity of changing his dress (had he not previously effected it), in my house, before I returned home. I allow, that if he had come in the scarlet coat, since he could not have known of my absence, it would have been a suspicious circumstance; but assuredly not conclusive against me, especially if he had divested himself of his sash, star, and medal, which your Lordship had every reason to believe was the fact, not one of the latter witnesses having deposed to "all this equipment." It does not necessarily follow, if he had appeared in a red coat, under a great-coat buttoned up, that he would have

unbuttoned the great-coat, or made any allusion to his dress. He came to me, not for a change of dress, but for permission to go on board the *Tonnant*: and there was no reason to imagine, and certainly no room to infer from the Affidavit, that if I had complied with his request, he would have expressed any dissatisfaction with his dress: on the contrary, he is stated to have asserted that he could not go to Lord Yarmouth or return to his lodgings in the dress he had on. But where would have been the necessity of his going to either, if his tale of distress had operated to the extent which he appeared to anticipate, and procured him permission to go immediately to the ship? It is not then impossible, consistent with my innocence of the Fraud, that he might have ventured to my house in the coat in which he had committed it. But, under such circumstances, it is more than probable, that on not finding me at home, he would have used the opportunity he possessed, by being alone in the parlour, of applying to his portmanteau, and changing it for the coat he had previously worn. Might it not very well have occurred to him, during the interval of my absence, that it would be prudent to divest himself of every thing that might by any possibility excite my suspicion? So that if the coachman had shewn as much regard to truth as he did to the premium, when he asserted that he saw a red coat underneath the great-coat, (p. 124), it did not necessarily follow that I must have been involved in the delinquency of the wearer, or that he *must*, on my return from Snow-hill, have had that dress upon him "in which he had come in the coach."

On the palpable fallacy and injustice of the assertion, that it "did not appear that he had any means of shifting himself," I have already remarked. It was too flagrant for repetition, even by the learned Judge who pronounced the Sentence of the Pillory. He did not pretend that De Berenger had not the means of change, but only

that he was straitened for time! "It is impossible to conceive," said Sir Simon Le Blanc, "that any change of dress could have taken place during the short interval, from the time at which he had got out of the coach to the period when he had appeared before Lord Cochrane." (pp. 598, 9). And certainly there were so many things to do before a change of coats could be thoroughly performed, that it would unquestionably have been a work of time. De Berenger would have had to take off his grey great-coat, to open his portmanteau, to take out his green coat, to take off his scarlet coat, to put on his green coat and his grey great-coat, to replace his scarlet coat in the portmanteau, and strap it up, before the operation could be said to be fully effected. But then, on the other hand, it was in evidence, that my servant had to go from Green-street, Grosvenor-square, to Great Cumberland-street, Oxford-road, and from Great Cumberland-street back to Green-street, which could not have occupied less than a quarter of an hour; and if, during that period, "it is impossible to conceive" that any change of dress could have been effected, it was further in evidence that he had then to go from Green-street, Grosvenor-square, to Cock-lane, Snow-hill, and that I had to return to Green-street—a distance of more than five miles, and making no allowance for incidental stoppages, occupying a period of not less than one hour and a quarter.* So that it is not so "impossible to conceive" that a change of dress might have taken place "during that short interval," as that so learned a Judge, during the execution of so solemn an office, should have vented so much absurdity and misrepresentation in one "short" period.

* When one of the Witnesses was questioned as to the distance from Cock-lane to Grosvenor-square (which I think cannot be less than two miles and a half), Lord Ellenborough said, "That is not of much consequence, I should think," (p. 346).

To return to your Lordship: "He must have had" that dress with him, whatever it was, in which he had "come in the coach. He says, that would excite "suspicion," (p. 484). Here your Lordship somewhat prematurely lugged in the word, "suspicion," in rather a *suspicious* kind of a way; without adverting to the nature of the suspicion alluded to, namely, a suspicion of violating the rules of the King's Bench. The next clause in the Affidavit, which your Lordship had not then quoted, describes De Berenger as saying that his dress would "excite suspicion at his lodgings—(he was then "in the rules of the King's Bench)."—Whether it might or might not have excited suspicion, and whether your Lordship was entitled to make me accountable for the truth of his assertions, I shall consider by-and-bye. "Why, if he had really a green uniform", said your Lordship, "that would not have excited observation or "suspicion; it was the very uniform he ought to have "worn," (p. 484). Whether it was the very uniform he ought to have worn or not, it certainly was not the uniform spoken of by Lord Yarmouth. Lord Yarmouth had told you that the uniform of his corps was a green waistcoat with a crimson collar (p. 376); but in no part of the Affidavit did your Lordship find the crimson collar. The jacket in which De Berenger appeared was entirely green; and the green collar appearing above the great-coat, was seen by several of my servants, who were waiting to be, and ought to have been examined to the fact. It was a plain green jacket, and if it was any uniform that De Berenger usually wore, it was not his parade but his drill dress, (p. 398). It was not the uniform spoken of by Lord Yarmouth, and therefore it might not have been usual or respectful to appear before his Lordship in that dress.

Your Lordship had previously observed, "As to the "idea suggested in Lord Cochrane's Affidavit, that his

" exhibiting himself in that uniform would be deemed
 " disrespectful to Lord Yarmouth, Lord Yarmouth has
 " told us that, on the contrary, he should have thought it
 " a matter of respect to him, and proper as his officer, to
 " have appeared before him in *that very dress*," (pp. 478,
 479). Lord Yarmouth did not say quite so much as that:
 he said that " it would have been nothing extraordinary,
 " and more military that he should do so, though I never
 " exacted it,"* (p. 377). But I have just proved to your
 Lordship from the Evidence, that it was not " that very
 " dress" to which Lord Yarmouth alluded. And if I am
 not much mistaken, I have detected your Lordship in
 improving a little upon that part of Lord Yarmouth's
 Evidence which could be made to oppose the Affidavit,
 and of omitting that part which, if connected with it,
 renders the whole perfectly consistent with, and favourable
 to my statement.

But admitting that De Berenger could have waited
 on Lord Yarmouth in a dress in which he told me he
 could not, by what authority did your Lordship make me
 the father of De Berenger's falsehood, or by what right or
 reason did you term it an " idea suggested in my Affi-
 " davit?" I had no distinct idea whether the coat and
 the cap were really the uniform of Lord Yarmouth's
 corps or not; but when he told me that he could not with
 propriety wait on Lord Yarmouth in that dress, I naturally
 conceived that as he had prepared himself to go on board
 to exercise the sharpshooters, and came to me for that
 purpose, that it might be a dress made for the occasion.
 And " as to the idea suggested" twice or thrice in your
 Lordship's Charge, that I must on the 21st of February
 have known that his exhibiting himself in uniform, when

* Lord Ellenborough made another addition to this answer of Lord
 Yarmouth, while recapitulating the evidence of that nobleman, viz.
 " I should not have been angry at it, but should have thought it the
 " regular dress for him to appear in," (p. 520).

not on duty, would not have been deemed improper by Lord Yarmouth, because Lord Yarmouth himself told your Lordship so on the 9th of June following, I can only plead my ignorance of the art of divination. I am sure your Lordship would not deem it essential to the innocence of a naval officer (if an Englishman), to comprehend by prescience Lord Yarmouth's superior knowledge of military etiquette; and it is rather too much to assume that every Scotchman has the gift of second-sight. This, however, I know, that whatever might be the propriety or impropriety of the adjutant of a volunteer corps paying a morning visit in regimentals, even to his colonel, when not on duty, I should have thought it an extraordinary circumstance if a brother officer, or even a lieutenant of the Tonnant, had visited me at my house in Green Street in naval uniform. And even if it be regular for officers of the navy to present themselves at the Admiralty in uniform, unless on arriving with dispatches, I have hitherto invariably erred in point of etiquette. I can appeal to Lord Melville, and all his predecessors now living, whether, in any one of the numerous instances in which I have attended at the Admiralty on subjects connected with the service, I appeared in any other than a plain dress? So that whether it would or would not have been unusual or improper in De Berenger to have visited his colonel in that dress, the objection was so far plausible, as that no person of my habits, and of no other knowledge on the subject than I possessed, and having no suspicion awake, could have had a doubt of its truth.

I observe that the last six words of the passage, "he could not go to Lord Yarmouth, or to any other of his *friends, in this dress*" (p. 484), are distinguished by italics. I should be glad to know for what reason: for if it was true, or sufficiently plausible to appear to me to be so (it matters not which), that he could not with propriety visit his colonel, when not on duty, in a green uni-

form and military cap, it certainly was no less true or probable that he could not so visit other persons of distinction. I know that, by this observation, I oblige myself to notice a question of the prosecuting counsel, who asked, "Why, I beg to know, cannot Mr. De Berenger go to Lord Yarmouth, or any other nobleman or gentleman, in the dress in which he waits upon Lord Cochrane?" (p. 39). To this it was answered, on my application for a Re-hearing, that "he had of necessity told me his nearly desperate state, in asking me to receive him on board my ship: but is there any thing so very incredible in the statement, that he was unwilling to tell his whole case to every body?" (p. 561); and certainly the tale of distress with which he came to me was sufficiently lamentable to have excused almost any irregularity of dress; especially with the apology, "that he had prepared himself in the best way his means allowed." But that which particularly distinguishes the cases is, that he came to me to request permission to go immediately on board to exercise the sharpshooters, for which his dress (as far at least as I understood) was perfectly suitable.

Your Lordship next quoted from the Affidavit as follows: "That he could not go to Lord Yarmouth, or to any other of his friends, in this dress, or return to his lodgings, where it would excite suspicion (he was at that time in the rules of the King's-Bench); but that, if I refused to let him join the ship now, he would do so at Portsmouth.* Under present circumstances, however, he

* Whatever De Berenger might have presumed, it was not my intention to have received him into the ship at Portsmouth without permission from the Admiralty. And indeed if he was then really desirous to join the Tonnant (and I have no reason to think otherwise), he was perfectly sensible that I was determined on that point, or he became so on reflection, as is obvious by his directing his course another way.

“ must use a great liberty, and request the favour of me
 “ to lend him a hat to wear instead of his military cap.
 “ I gave him one* which was in a back room, with some
 “ things that had not been packed up; and having tried
 “ it on, *his uniform appeared under his great coat*;† I
 “ therefore offered him a black coat‡ that was laying on
 “ a chair, and which I did not intend to take with me.
 “ He put his uniform *in a towel*, and shortly afterwards
 “ went away,” (pp. 484, 5). And here I shall beg leave to
 make my own observations, before I proceed to comment
 upon those made by your Lordship. It did I think
 appear in evidence, that it was not unusual with De
 Berenger to go out in uniform, or at least in his green
 drill-dress; but it was forgotten that the proof of his
 wearing uniform in the rules of the King’s-Bench, like
 that of the [propriety] of his visiting Lord Yarmouth in
 it, did not appear till the Trial. I was equally ignorant
 of both on the 21st of February. On the very few oc-
 casions on which I had previously seen him, he was
 habited in a plain dress; and it is notorious that volunteer
 officers in general do not habitually appear in uniform.
 And “ as to the idea suggested” by the prosecuting
 counsel, that his return was not so likely to excite sus-

* The hat which I gave to De Berenger had a remarkably low
 crown and broad brim; and was very different from such as he usually
 wears. It was such as I have long been in the habit of wearing
 when on shore, and had in it, in large letters, the name of CATER,
 who could possibly have recognised it as a hat he had actually sold to
 me. Even this I think is some argument that I could not be privy
 to what De Berenger had been about.

† This is one of the passages which the short-hand writer, or Lord
 Ellenborough, has inserted in italics. If it requires any explanation, it
 is this: that De Berenger, on trying on the hat at a looking-glass, and
 buttoning up his great-coat, perceived and remarked that his uniform
 was visible.

‡ It has been said that this coat must have been too long for De
 Berenger, which, as far as any argument at all, goes to prove that
 his visit was unexpected.

picion at his lodgings as his going out (p. 39); I should have thought that in general it is easier to leave a house early in the morning* unobserved, than it is to return at noon-day; the more especially, when it is considered that a man may open the door for himself from within, but that he cannot always gain admission without the assistance and observation of another. He could not I conceive have returned without exhibiting both his coat and his cap; and though both the one and the other might have belonged to the uniform of his corps, for any certain knowledge I had to the contrary, yet if he had not usually worn them there (and I did not know that he had, and supposing them to have been expressly prepared for the purpose of exercising the naval sharpshooters, I conceived he had not; and with respect to the cap, he certainly had not), they might have excited a suspicion of his violating the rules of the King's-Bench. If I had understood the word *suspicion* (as used by De Berenger) in the sense insinuated by the prosecuting counsel (p. 39), I am persuaded that such a word would never have appeared in the Affidavit.

Whether there was any truth at all in De Berenger's ostensible motives for desiring a change of dress, whether he had even the slightest intention of adopting my advice of applying to any of his friends, or whether he was not wholly indifferent as to any suspicions of the people with whom he lodged, as far as related to a violation of the Rules, are considerations of no importance whatever: it is sufficient that the reasons he assigned were such as, to an innocent and unsuspecting person, might appear probable and true, and that they did so appear to me. It must however be admitted, that the dress as described by me, was such as De Berenger must have had real and urgent reasons to desire to get rid of, or

* Not knowing where De Berenger had been, I must naturally have concluded that he had left his lodgings in the Rules *early* that morning.

he would not have adverted to the subject in my presence. His ostensible motives, though plausible, were inferior, if not entirely fictitious. But I contend not only that his true or principal reasons were then unknown to me, but that they are now obvious, that they were sufficiently so at the Trial, and that they partly originated in my refusal to receive him without permission from the Admiralty.

If your Lordship could have endured the supposition, though but for a moment, that the dress was such as I had described upon oath, a probable reason for his desiring to change it would, I think, have instantly suggested itself. It must have been known to your Lordship, that if the coat in which I saw him was not that in which he had committed the crime, it must necessarily have been that in which he had gone down to Dover preparatory to its commission; and therefore, in De Béranger's mind, it might not be wholly unconnected with it. There is a possibility that he was not altogether invisible in his way to Dover; and as guilt is not always unaccompanied with fear, he might have had a secret apprehension that to appear even in that dress might tend to his detection. It was in evidence, and it did not escape your Lordship's observation, for I observe that the words are in italics, that *his uniform appeared under his great coat* (p. 485); and therefore the idea of exhibiting himself both in the under and the upper dress in which he had appeared immediately previous to, and in preparation for his crime, might not have been an agreeable one in his imagination. He would possibly have had no objection to an immediate riddance of both, especially as the upper coat was worn not only preparatory to the crime (p. 139), but through the whole course of its commission; and if it had been possible to start a plausible objection to that part of his dress as well as the other, there can be little doubt that he would have done it. His leaving my house with that coat upon his back, is not only wholly inconsistent with any previous arrangement for a change of dress, but

can in no way be so probably accounted for, as by admitting an apprehension on his part, that to have asked too much might have awakened my suspicions.

The moment that De Berenger was proved to have been Du Bourg, his reluctance to exhibit himself in the dress which I described, so far as it had reference to the coat (for it is clear from the Affidavit that it more particularly applied to his military cap), must, one would have thought, have appeared to your Lordship nothing extraordinary, considering, as I above observed, that it was the coat in which he must have been seen on his way to Dover, and which he wore down to the moment when he assumed his fraudulent character. It now appears, that he resumed that dress before his arrival at the Marshgate, which furnishes another strong and probable motive for his desiring once more to lay it aside. He appears to have taken every precaution to guard against the observation of the post-boy,* but he could not be sure that he had succeeded; and many other persons were present at his transit from the chaise to the coach, and he could hardly imagine that the green coat escaped the observation of them all, which fortunately it did not; and he must have been apprehensive that it was seen by the hackney-coachman.

Your Lordship considered the coachman's evidence to the entrance in scarlet, to be fatal to my evidence to the appearance (two hours afterwards) in green. It would have been but fair to have taken the converse of the supposition for a moment; and then supposing De Berenger to have entered in green, your Lordship could not have been at a loss for a "true or probable motive" (p. 486) for his desiring to change it. It was perfectly natural that he should wish to get rid of that dress (whether red or

* See the 13th and 14th pages of this Letter.

green) in which he had been seen by the person who conveyed him from the chaise to my house. The information of that person would of course be sought for as soon as the imposture became known, and any description that he might give, it was natural to apprehend, would immediately be made public. Your Lordship, however, was utterly unable to conceive why he should not have preferred a green coat to all the coats in the world; and notwithstanding it was observed on my application for a new trial, that "it may now doubtless be perceived that De Berenger had other reasons (than those he had assigned) for disliking to go out in a green dress," (p. 561), your Lordship still continued of the same opinion; and so did Sir Simon Le Blanc, who, on passing Sentence, repeated the old question, "What could be the motive for changing his dress, if he then had on the uniform of any corps of volunteers in this town?" (p. 599).

Your Lordship appears to have assumed that De Berenger was under no less necessity to change his coat than his cap; although, as I before observed, it is fairly deducible from the Affidavit, by which it appears that he confined his request to a hat only, that he was less dissatisfied with the former than the latter; which would hardly have been the case, had he then worn "a red aide-de-camp's uniform," and "a star, and all this equipment." He knew that it was not the cap of his corps, which I did not; and if at the moment he had any intention of going to Lord Yarmouth, he must have felt the absolute necessity of getting rid of it before he appeared before his Lordship; and in all probability the people at his lodgings would have known that it did not belong to his corps. It was bought (as appeared at the Trial) expressly with a view to the fraudulent expedition, and worn down to its termination. It was against the cap, therefore, that De Berenger's secret objections more particularly lay: but from the general word "dress," and his

observing, when he looked in the glass, that his uniform appeared under his great-coat, I, who knew nothing of the nature or different degrees of suspicion that might attach to those two articles of dress, understood his objections to be such as he assigned, and conceived that they applied equally to both; and for that reason it was, and feeling "very uneasy at the distress he was in," and hurt at the necessity of refusing his request to go on board, that I voluntarily offered him another coat; which, though he willingly accepted, I am convinced he had no intention of requesting. Whether his remark, on trying on the hat and buttoning up the great-coat at the looking-glass, "my uniform appears," was intended to lead to such an offer on my part, or whether it was not an involuntary exclamation, I cannot decide: but it is possible that the unexpected appearance of the uniform under the great-coat might have suddenly excited an apprehension, that on quitting the chaise it had not escaped the observation of the post-boy, to whom he had previously displayed the uniform of an aid-de-camp. However this may be, I have no doubt that if I had granted him permission to go immediately on board, he would have left the house without evincing any desire to change, or making any allusion to his dress.

Another assumption made by your Lordship was, that I must have known that the cap in which De Berenger came did not belong to his corps (p. 485). The fact is, that I am by no means certain that I even saw the cap; for, notwithstanding the familiarity alleged by your Lordship, he did not wear it in my presence. But whether I saw it or not is a matter of no consequence, because I had never to my knowledge seen the real cap of Lord Yarmouth's Rifle Corps. I am therefore under no necessity of pleading my uncertainty on this point, and the prosecuting counsel possibly may triumph over it, as an unguarded admission. He may say that 'Lord

‘ Cochrane swore that De Berenger wore a military cap, and yet had no other authority for the fact than the subsequent information of his servants, and De Berenger’s declaration at the time, and his asking him for a hat to wear instead of it.’ Mr. Gurney* thought the Affidavit smelt so strong of perjury that he could hardly bear to bring it into Court; and truly it was no small violation of delicacy so to do. My admission that I introduced the military cap into the Affidavit without the certain authority of ocular demonstration, entitles him to boast of the acuteness of his perception: and he is deserving of no less praise than that discerning personage, who distinguished in a pipe of wine an iron-kind-of-a-taste from a nail at the bottom of it.

* Mr. Gurney, who conducted the Prosecution with a ferocity worthy of his employers, did not think it sufficient to charge me with perjury in my own person, but with the perjuries of two of De Berenger’s servants, who made Affidavits to shew that their master slept at home the night previous to the Fraud. He did not only describe me as accessory to the publication of these Affidavits, although I first saw them in print, but as the actual author. “ These Affidavits,” said Mr. Gurney, “ are of the same manufacture with the others,” (p. 41); alluding to my Affidavit, and those which I had written from the mouths of my servants: and the reason adduced by Mr. Gurney in support of this infamous accusation was, that they were all made in the *first person*. He did not chuse to reflect, that if I was so little acquainted with the common form of affidavits as to depose in the first person rather than in the third, as is usual, it was not at all probable that De Berenger’s servants should be better informed. Neither did he think proper to consider, that, if their Affidavits were their own spontaneous acts, or if they were made at the instigation of any person whatever, not well acquainted with the usual form of affidavits, it was more likely that the form of my Affidavit should be adopted than any other form, inasmuch as it had been recently published, and had reference to the same transaction. It is remarkable, that at the same time that this learned person evinced a disposition to ridicule my ignorance of the usual form of affidavits, he gave me credit for a distinction which I will venture to say is not generally known; and if any other advocate had conducted the Prosecution, I am persuaded that I, for one, should still have remained ignorant, that perjury is only indictable when committed in a court of law.

It is stated in the Affidavit, that "He put his uniform in a towel, and shortly afterwards went away in great apparent uneasiness of mind." I cannot guess at your Lordship's reason for omitting these last words, "in great apparent uneasiness of mind;" but I am at no loss for the motive which dictated the remark which followed. "If he put that uniform in a towel," said your Lordship, "he must have pulled it off his back, for it was on his back before; and then Lord Cochrane, one would think, must have seen him do it.* What business had this man with a red aid-de-camp's uniform?" (p. 485). Never having seen this man in a red aid-de-camp's uniform, it is not my business to answer this question. But what business had your Lordship to imagine that he put any other uniform in a towel than that which I had been speaking of? Was there any other Evidence in the cause to his putting an uniform in a towel? But your Lordship goes further, and asserts positively, that "it was on his back before;" not meaning merely before he entered the house, but while in my company, as is obvious from the context; for "if he put that uniform in a towel, he must have pulled it off his back (for it was on his back before);" and "Lord Cochrane, one would think, must have seen him do it." It is impossible to think that I must have seen him pull it off, without taking it for proved that I had first seen him wear it; and lest the Jury should have foolishly imagined that by the words "that uniform" your Lordship intended the description of uniform spoken of in the Evidence then under consideration, your Lordship immediately exclaimed, "What business had this man with a red aid-de-camp's uniform?" The "if" in the beginning is too distant, and too strongly opposed by all the laws of

* Why should Lord E. have thought so? "The things which had not been packed up," were stated to have been in a back room; and it was there, and not in my presence, that De Berenger altered his dress.

grammar, to extend its qualifying influence over the stubborn positiveness of all that follows. I am entitled to affirm, that your Lordship did, in the above passage, positively state to the Jury, in direct contradiction to the only Evidence on the subject, that De Berenger was seen by me in a red aid-de-camp's uniform; and your Lordship did tell the Jury that they were to decide upon *that statement* of the Evidence which you should make to them, (p. 448).

There is no less certainty in your Lordship's statement to the Jury than in that of Sir Simon Le Blanc in pronouncing the Sentence of the Court: "There is no doubt," said Sir Simon, "but the defendant De Berenger, with the privity and in the presence of my Lord Cochrane, changed the uniform which he wore at the time, and in which he is *proved* to have entered clothed," (p. 592).

What then becomes of the assertion made by the Solicitor-General in the House of Commons, that your Lordship did, after all, leave the question to the determination of the Jury? It was never pretended that your Lordship took the trouble of pronouncing the Verdict out of the Jury's mouth; but whether they did not take the Verdict itself out of your Lordship's, is another question.

"He had no business," continued your Lordship, "to wear any such garb; he was almost as much out of his proper character as I should be, if I appeared habited in the particular dress of an officer or a clergyman;" or as if your Lordship had appeared on the Bench, in the character of an advocate instead of a judge. "But it does not rest there; for he himself lends to this person the immediate means of his concealment," (p. 485). This is in some respects similar to one of the most wicked

perversions made by the prosecuting counsel, who, because I did not choose to take De Berenger to America without proper authority, but admitted that I assisted him with such means as were intended either to enable him to apply for it or to return to his confinement, inferred that I had confessed the lesser delinquency of *assisting him to escape*, in order to conceal a greater, (pp. 39, 40). Mr. Serjeant Best was sure that Mr. Gurney would be exceedingly sorry for having made such an observation; and he very clearly, though very courteously proved, that he ought to have been both sorry and ashamed (p. 272); but as I have heard nothing of that gentleman's penitence, but believe that, though "convicted, he is unrepenting" (p. 587), I conclude that he was less impressed by Serjeant Best's reproof, than hardened by your Lordship's approbation.

"But it does not rest there," said your Lordship; "for he himself lends to this person the immediate means of his concealment; he lets him have a hat instead of his *laced cap*; and what had such a cap to do with a sharpshooter's uniform?" (p. 485). As I took not the slightest notice of De Berenger's laced cap, and am by no means certain that I even cursorily saw it, and as I never, to my knowledge, saw the genuine cap of Lord Yarmouth's Rifle Corps until a few days ago, it was impossible for me to know how far the one might resemble the other. But how came your Lordship to be so learned in military caps? or to know that "*laced caps*" were not worn by the officers of Lord Yarmouth's regiment? I strongly suspect that your Lordship was wholly ignorant on the subject, till the very day, and indeed at the very moment when you mentioned it as a matter impossible not to know. Your Lordship had previously observed, "The uniform of the Rifle Corps is of a bottle-green colour, made to resemble the colour of trees, that those who wear it may hide

“ themselves in woods, and escape discovery there,” (p. 478). And yet Lord Yarmouth had told you, that his bottle-green uniform had a *crimson* cape (p. 376), which has as little to do with the colour of trees as gold or silver lace. Why, therefore, might not his sharpshooters wear laced caps as well as crimson collars, for any thing that either I or your Lordship could be supposed to know to the contrary ?

I have lately taken the trouble to inquire whether there might not be a bit of gold lace attached to De Berenger's Rifle Corps cap ; and, to my great surprise and indignation, I discovered, that by a never-enough-to-be-reprobated anticipatory violation of the law on the subject, as laid down by your Lordship, there was actually worn by De Berenger, when on duty as adjutant of Lord Yarmouth's Rifle Corps, a large black cap (not a green one), with a spacious *gold* band upon it ; moreover, a long *gold* tassel pendant, and a death's head and marrow-bones in bronze. So that, what with crimson collars and gold bands, &c. &c., it should seem that Lord Yarmouth's sharpshooters were not intended for bush-fighting only, as insinuated by your Lordship, but also for skirmishing behind brick walls. If this is not a sufficient answer to the question so indignantly put by your Lordship, “ What had a *laced* cap to do with a sharp-shooter's uniform ? ” it devolves on the author of that question to furnish a better solution.

Your Lordship continued, “ Upon seeing him “ appear habited, as all the witnesses represent him to “ have been, in his way from Dover to Green-street, “ Grosvenor-square, would not any one who had known “ him before have immediately exclaimed, ‘ Where have “ you been, and what mischief have you been doing in “ this masquerade dress ? ’ It is for you, gentlemen, to “ say, whether it is possible he should not know that a

“ man coming so disguised and so habited, *if he appeared before him so habited*, came upon some dishonest errand; and whether it is to be conceived a person should so present himself to a person who did not know what that dishonest errand was, and that it was the very dishonest errand upon which he had been so recently engaged, and which he is found to be executing in the spreading of false intelligence for the purpose of elevating the Funds, *if he actually appeared to Lord Cochrane stripped of his great coat, and with that red coat and aid-de-camp's uniform, star, and order, which have been represented to you, he appeared before him rather in the habit of a mountebank than in his proper uniform of a sharpshooter,*” (pp. 485, 486). The words which I have written in capitals and italics, do not appear in any other report of your Lordship's Charge that I have hitherto seen; but the shadow of a doubt conveyed by those words is so completely buried in the overwhelming certainty of the whole, that I am not surprised it should have escaped the observation of the reporters; and I freely acquit your Lordship of any subsequent interpolation. It is sufficient for me to have shewn, that much was assumed or insinuated which was not proved, and which has since been completely disproved.

It is next stated in the Affidavit: “ And having asked my leave, he took the coach I came in, and which I had forgotten to discharge, in the haste I was in.” Your Lordship omitted the *asking leave*, possibly because it was no proof that De Berenger and I were so familiarly acquainted as your Lordship was pleased to suppose. “ The above conversation is the substance of all that passed with Captain De Berenger, which, from the circumstances attending it, was strongly impressed upon my mind.” And here your Lordship skipped over, without citation or allusion, a portion of the Affi-

davit which I think "very material," namely, "that no other person in uniform was seen by me, at my house, on Monday, the 21st of February, though possibly other officers may have called (as many have done since my appointment): of this, however, I cannot speak of my own knowledge, having been almost constantly from home, arranging my private affairs. I have understood that many persons have called under the above circumstance, and have written notes in the parlour; and others have waited there in expectation of seeing me, and then gone away: but"—[so far was omitted by your Lordship]—"I most positively swear that I never saw any person at my house, resembling the description and in the dress stated in the printed advertisement of the members of the Stock Exchange." I do not think it possible for any unprejudiced person to peruse the whole of the above passage, without being impressed with a belief that it was written in a state of unfeigned uncertainty and perplexity as to whether the pretended Du Bourg had really been at my house or not, and that I was strongly inclined to an opinion that De Berenger was not that person. To that opinion I unfortunately, but conscientiously adhered, to the very day on which your Lordship taught the Jury to convict me as his accomplice. I think that your Lordship did me an injustice in omitting this portion of the Affidavit.

Your Lordship cited the latter part of the sentence as follows: "I most positively swear that I never saw any person at my house, resembling the description and in the dress stated in the printed advertisement," which I suppose will be read, "of the members of the Stock Exchange," (p. 486). Unless your Lordship, as I before remarked,* supposed that it would be read by the Jury, although it had not been read on the Trial, it is impossible to conjecture what could be meant by such a supposition. But how were the Jury to read a paper

* See page 29 of this Letter.

that had not been produced? Could your Lordship seriously suppose that this advertisement was in the Jury-box? Could you even suppose that there was a copy in existence, when not one of the counsel on either side could procure one to lay before your Lordship? Mr. Gurney, I believe, did not like the date of it; it was fatal to his argument (repeatedly enforced by your Lordship), that the Affidavit was wilfully delayed in order to give De Berenger time to escape. I believe, too, that he was equally averse to the contents; for in that advertisement the Committee of the Stock Exchange, as well as in their Report, which was also kept back at the Trial, gave an erroneous description of the upper coat, describing it, on the authority of the post-boy and coachman, as brown instead of grey, which was proved to have been the actual colour, by a large majority of witnesses, as well as by a *fac simile* produced in Court. And therefore had that erroneous description come before the Jury in evidence, it might have occurred to them that those persons were not such accurate observers, as that their testimony to the colour of a coat should be considered conclusive in a criminal case of so much importance. It was this inaccuracy, too, in the description of the great-coat, that materially contributed to my opinion that De Berenger was not Du Bourg: it was impossible for me to suppose that a person whom I had seen in *green* and *grey*, should be the same person that was said to have been traced to my house in *red* and *brown*. The production, therefore, of either the Advertisement or the Report, would have spoilt that part of Mr. Gurney's speech, in which he attempted to ridicule and infer criminality from those *criticisms*, as he was pleased to call them, on the Stock Exchange Report, which I had published under the influence of that opinion. I had expressed some surprise how the Dartford post-boy and the hackney-coachman came so EXACTLY TO AGREE in *mistaking grey for brown*. This was described by Mr. Gurney as a criticism on the

DIFFERENT statements of these two persons, "one having " called the great coat a MIXTURE, and the other *brown*," (p. 33). So that by way of ridiculing my remark, and in order to bring brown and grey a little nearer together,* Mr. Gurney did not hesitate to give a new reading to the Stock Exchange Report (which he could not well have done had it been produced), as well as to my observation upon it. And he then proceeded to reconcile this imaginary contradiction of his own creation, by observing, " In truth it was a greyish mixture," (i. e. somewhat of a mixt kind of a mixture); " a military great-coat," (p. 39); but, " in truth," it was no otherwise a mixture than as grey is itself a mixture, and was as distinguishable from brown as red is from green.

On the next passage your Lordship made no observation: " I further aver, that I had no concern, " directly or indirectly, in the late imposition:" your Lordship did not conceive this unequivocal denial upon oath entitled to the slightest notice; and felt nothing improbable or repulsive in the idea of a person of my rank, character, and profession, adding perjury to fraud. Your Lordship did not submit to the Jury, that it was a very "*pointed*," or very important observation of the counsel for the defence, " that there was no reason to " infer from the former life of this Defendant, that he " was so completely lost to all sense of right and wrong, " to all sense of what is due to himself, as to make oath " to that which he knew to be absolutely false," (p. 269).

" I further aver, that I had no concern, directly or " indirectly, in the late imposition; and that the above is " all that I know relative to any person who came to my " house in uniform on the 21st day of February before

* They were brought very close together indeed by the coachman, who, to reconcile the real colour of the coat to his own previous false description, described it at the Trial as a *brown-grey*, (p. 135).

"alluded to. Captain De Berenger wore a grey great-coat, a green uniform, and a military cap."—"Now, did he wear a green uniform", repeated your Lordship, "they are at issue upon the dress then worn by him; if he had not this dress on, what other had he? and if he had the green one on, what true or probable reason existed for the change of that?" (p. 486). I have shown that there were reasons both probable and true. It was the dress in which he must have travelled, and been seen in his way to Dover; it was the dress in which he entered the coach at the Marsh-gate; and he could not be certain, notwithstanding his precautions, that it had not been seen by the post-boy, who had previously seen him in the scarlet uniform, and who in that case would doubtless have suspected the imposture, and probably have given immediate information; and he must have apprehended that it had been seen by other persons at the Marsh-gate. It was the dress in which he entered my house in Green-street, and in which he was seen by my servants and the hackney-coachman. It was not the uniform of his corps; and if at the moment he had any intention of applying to Lord Yarmouth as recommended by me, it might have been unusual and disrespectful to visit his Lordship in that dress.

Some of these "true or probable" motives, were not unknown to your Lordship at the Trial; and any of them, I think, was sufficient to incline De Berenger to a change of dress. But it was most unreasonable and unjust to conclude, that an acquaintance with all or any of his real reasons for desiring a change, was essential to induce me to afford him the means. The reasons which he assigned, as they appear in the Affidavit, whether true, or partly or entirely false, were, as I have shown, and as your Lordship had no just reason to doubt, sufficiently probable to satisfy an unsuspecting person in my situation, under all the circumstances.

Your Lordship proceeded: "The unfitness of appearing in it before his commanding officer, Lord Yarmouth, is negatived by Lord Yarmouth himself," (p. 486). Occasionally your Lordship exercises the admirable faculty of conveying a great deal of meaning with a great deal of force, in a very few words. A less laconic judge might have expressed himself thus: 'The propriety of De Berenger appearing before Lord Yarmouth in a green uniform *without skirts*, and *with a crimson collar*, has this day (June the 9th) been proved by Lord Yarmouth himself: consequently (on the 21st of February preceding) Lord Cochrane must have known that Lord Yarmouth would not have considered it improper or extraordinary, if De Berenger had made his appearance in a green uniform *with skirts*, and *without a crimson collar*.'

"Supposing him to have appeared in any disguise," continued your Lordship, "it is the conduct of an accomplice to assist him in getting rid of his disguise," (p. 486): but it is not the conduct of an accomplice to proclaim that assistance. It is, however, the conduct of a swindler to impose upon honest men, and to obtain assistance under false pretences: and it is the conduct of an impartial judge to state both sides of a question.

Your Lordship proceeded: "To let a man pull off at his house the dress in which (if all these witnesses do not tell you falsely) he had been committing this offence, and which had been worn down to the moment of his entering the house, namely, the star, a red coat, and appendant order of masonry, seems wholly inconsistent with the conduct of an innocent and honest man," (pp. 486, 7). It was your Lordship, and not "all these Witnesses," who accompanied De Berenger, with the star and appendant order of masonry, "to the moment of his entering the house." Your Lordship

might have collected from the Evidence, that the order of masonry had been taken away, and the star vanished at an early hour in the morning: though not at quite so early an hour as another Star and Order, which I could mention. The post-boy had told your Lordship that he could not swear to the star; and though he opened the chaise-door, that he was not close enough to see it. The waterman was as close, but he could not see it; and even the coachman, who pretends to have been as close as either,* could not get a glimpse of it. A sash, too, had been deposed to by previous witnesses; but neither the sash, star, nor order of masonry were visible by day-light. The truth is, the scarlet coat, and 'all its blushing' honours thick upon it, had been buried in the womb of the portmanteau, which, to imitate an expression of your Lordship's, was *pregnant of these devices*, (p. 452)†; and it

* He swore at the Trial, that he opened the coach-door in Green-street, although in truth it was opened by the servant, (p. 125).

† In commenting on the letters of Mr. Johnstone to the chairman of the Stock Exchange Committee, in which it was proposed to give 10,000*l.* to M'Rae to discover the authors of the imposition, Lord Ellenborough thus expressed himself: "By a most remarkable offer on the part of Mr. Cochrane Johnstone, it is proposed that there should be the sum of 10,000*l.* given to this man—a man in a low and ordinary and desperate situation; and it is stated, that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt would give 3,000*l.* among them. Why should they give that? If indeed they could thereby mislead and draw away the public attention, and divert it to the pursuit and hunting down of M'Rae, as the sole artificer and perpetrator of the Fraud, and could thereby turn aside observation and suspicion from themselves (supposing them to be properly charged with this offence), 3,000*l.* would be well paid, and cheaply employed for such a purpose. It is for you to say whether these letters which have been read to you, do not appear *pregnant of this contrivance and device* on the part of the writer," (p. 452). This was certainly placing the circumstance most decidedly in one point of view only, which was rather, I apprehend, the province of the advocate than of the Judge. Whether the object of "the writer" was not such as Lord E. described, it is not

would have been but common humanity in your Lordship to have assisted in the delivery.

Your Lordship continued: " For if he appeared in such an habit, he must have appeared, to any rational person, fully blazoned in the costume of that or of some other crime, which was to be effected under an assumed dress, and by means of fraud and imposition," (p. 487). In all other reports which I have seen or heard, the substance of the above passage was expressed with great strength and brevity: " He appeared before Lord Cochrane fully blazoned in the costume of his crime." I admit, however, that notwithstanding your Lordship's occasional sententiousness, there must have been a concurrent deviation in the accounts of different persons from the language actually used by your Lordship: but I consider the strong expression above stated,

incumbent upon me to express an opinion. But I shall take this opportunity of observing, that when I heard from Mr. Johnstone of his first proposition to the Committee, which he had made without my knowledge, by his letter of the 12th of April, containing M'Rae's proposal, and offering to contribute liberally himself, but without any mention of my name or that of Mr. Butt (pp. 232, 3), I attributed no other motive to the writer than a natural anxiety to transfer an unmerited stigma from himself to those to whom it properly belonged. At the same time it appeared to me an extravagant proposition; but Mr. Johnstone appeared to be of a different opinion: he told me that there could be no doubt that M'Rae knew the actual authors of the plot; and since the reward was only to be paid on conviction of the offenders, he thought the discovery was well worth the money: he added, that he would freely give a thousand pounds out of his own pocket to discover the delinquents; to which I immediately rejoined, " So would I;" but without the most distant idea of concurring in any proposition to the Committee respecting the proposal of M'Rae. Mr. Johnstone, however, on no other foundation than that which I have mentioned, stated to the Committee, in his letter of the 18th of April, that I was willing to subscribe 1,000*l.* in aid of the 10,000*l.* required by M'Rae, (pp. 233, 4). Mr. Butt assures me that his consent was of the same kind, and given much in the same manner.

rather as a consolidation, than a misrepresentation of your Lordship's meaning. In a previous part of the Charge, I find the following passage :—" The first question, gentlemen, will be, was the Defendant, De Berenger, the man who was found at Dover about one o'clock on the morning of Monday the 21st of February, and who proceeded through the several stages to London, and ultimately to the mansion of Lord Cochrane *himself*, and was there *received* with that dress, whatever it was, that he wore? But the dress he wore was *proved* by so many witnesses, that I will not fatigue you with stating it now, because I must by-and-bye state the whole of the Evidence to you," (p. 452). When this sentence is considered in connection with the following, " he must have had that dress with him, whatever it was, in which he had come in the coach; and it does not appear that he had any means of shifting himself," (p. 484); and with this; " If he put that uniform [namely, the scarlet uniform] in a towel, he must have pulled it off his back, for it was on his back before; and then Lord Cochrane, one would think, must have seen him do it," (p. 485); coupled with the fact of his afterwards walking off with that dress in a bundle, instead of having that dress upon his back," (p. 487); and " it does not rest here, for he himself lends to this person the immediate means of his concealment," (p. 485). I say, when these passages are considered, and another which I am going to consider, the " if," with which your Lordship introduced his appearance in the " costume of his crime," becomes a mere expletive; and as such it was possibly considered by the Jury, and judiciously omitted by the reporters.

The passage which I am about to consider, relates to the finding of the dress; and, according to the phraseology of the deviating reporters, it is as follows :—" Having hunted down the game, the prosecutors showed what became of his skin." And here it is remarkable, that if

the said reporters rather strengthened your Lordship's expressions in some instances, in this they have not done you justice : for in the genuine Charge, as revised by your Lordship, it stands thus : " You have before had the " animal hunted HOME ; and now you have his skin, found " and produced as it was taken out of the river, cut to " pieces," (p. 478). There is no small difference between hunting the animal *down* and hunting him *home* : " he might have been hunted to my residence, and hunted down there, and fallen as far a-field as if he had been chased to your Lordship's ; but by hunting him *home*, your Lordship terminated at once both the chace and the question ; and left nothing to be done by that *special* body, the whippers-in, but, on finding the beast of prey in my habitation, to denounce it as his customary retreat, and me, as the abettor of his depredations, and criminal receiver of the spoils. But I am firmly persuaded that your Lordship, by this time at least, is pretty well convinced that I was not less the victim of the animal than of his pursuers.

On the subject of sinking the dress, your Lordship added, " the sinking of it could have been with no other " view than that of suppressing this piece of evidence, " and preventing the discovery which it might otherwise " occasion ; this makes it the more material to attend to " the stripping off the clothes, which took place in Lord " Cochrane's house," (p. 478) ; which I take to be a direct intimation to the Jury, that your Lordship considered me accessary to " the *sinking*" as well as " the *stripping* ;" and yet it appears to me, that if I had felt the necessity of sinking any article of De Berenger's dress, I should have felt it no less necessary to *sink* the circumstance of " the *stripping*." And it also appears to me, that if I had known that his dress was " the costume of crime," and had had any personal reason " to suppress this piece " of evidence," I should have used a more cautious,

ready, and effectual method of doing it, by committing it to the flames in my own house, than by sending it out in a bundle, to be sunk at Old Swan-stairs. And it was in these points of view that "the sinking" made it "the more material to attend to the stripping, which took place in Lord Cochrane's house."

The evidence to the discovery of the dress, as recapitulated by your Lordship, was as follows: "George Odell, a fisherman, says, 'In the month of March, just above Old Swan-stairs, off against the iron wharfs, when I was dredging for coals, I picked up a bundle, which was tied up with either a piece of chimney-line or window-line, in the cover of a chair-bottom; there were two slips of a coat embroidery, a star, and a piece of silver, with two figures upon it; it had been sunk with three pieces of lead and some bits of coal; I gave that which I found to Mr. Wade, the secretary of the Stock Exchange; it was picked up on the Wednesday, and carried there on the Saturday. I picked this up on the 24th of March,' " (p. 478). The *animal* appears to have deposited his *skin* in so injudicious a place for its ultimate concealment, that one might almost surmise that he anticipated some future occasion for it, and possibly in the way of fraud, but upon whom is another question. Not to mention the facility with which *fac-similes* may be procured (as shown at the Trial), there is an old saying, that "they who hide can find;" and strange as the discovery was, I am not without a suspicion that one still more extraordinary remains to be made.

Although I have already cited and answered in detail almost the whole of the observations with which your Lordship introduced the subject of the Affidavit, I cannot refrain from copying them at length, in order that those who read this Letter may have a clearer view of the manner in which your Lordship prepared the Jury for the

consideration of my statement. " You have before had
 " the animal hunted home ; and now you have his skin,
 " found and produced as it was taken out of the river,
 " cut to pieces. The sinking it could have been with no
 " other view than that of suppressing this piece of evi-
 " dence, and preventing the discovery which it might
 " otherwise occasion : this makes it the more material to
 " attend to the stripping off the clothes, which took place
 " in Lord Cochrane's house. When he pulled off his great-
 " coat there, what must he have displayed to his Lord-
 " ship's eyes, if present at the time ? Did he display the uni-
 " form of the Rifle Corps ? The uniform of the Rifle Corps
 " is of a bottle-green colour, made to resemble the colour
 " of trees, that those who wear it may hide themselves in
 " woods, and escape discovery there ; that is, I presume,
 " the reason of their wearing that species of uniform :
 " and as to the idea suggested in Lord Cochrane's Affi-
 " davit, that his exhibiting himself in that uniform would
 " be deemed disrespectful to Lord Yarmouth, Lord Yar-
 " mouth has told us that, on the contrary, he should have
 " thought it a matter of respect to him, and proper as
 " his officer, to have appeared before him in that very
 " dress. The account that is given of this man's pulling
 " off his dress, as contained in the Affidavit of Lord Coch-
 " rane, is highly deserving of your attention. It is a
 " rule of law, when evidence is given of what a party
 " has said or sworn, all of it is evidence (subject to your
 " consideration, however, as to its truth), coming, as it
 " does, in one entire form before you ; but you may still
 " judge to what parts of this whole you can give your
 " credit ; and also, whether that part which appears to
 " confirm and fix the charge, does not outweigh that
 " which contains the exculpation. Now I will state to
 " you what is Lord Cochrane's Affidavit," (pp. 478, 9).
 And if your Lordship had then been content to recite it,
 without an additional observation, the Jury could have
 had no doubt as to the opinion they were expected to

form upon it: and therefore the *summing up*, or rather *cutting up*, which followed, was more a labour of love than of necessity.

To revert to the conclusion of your Lordship's comment: "For if he appeared in such an habit, he must have appeared to any rational person fully blazoned in the costume of that or of some other crime, which was to be effected under an assumed dress, and by means of fraud and imposition," (p. 487). If, however, De Berenger had actually presented himself to me "in such an habit," and had told me that he had so disguised himself in order to escape from the rules of the King's Bench, I do not believe that I should have discredited his statement, or suspected him of any other or greater delinquency: and although I should certainly have done nothing to promote his ultimate escape, yet if he had subjoined the pathetic history of his destitute condition, I am by no means convinced that feelings of indignation at his offence or intrusion, would have so conquered those of commiseration as to have impelled me to betray him to your Lordship's officers. This may appear a very horrible confession to your Lordship, and not less so to the prosecuting Counsel, who appeared to be of opinion, that, unless I had been the accomplice of De Berenger, I should have seized on his person, and returned him to the custody of the marshal; as if every man must needs be a thief who is not a thief-taker. This gentleman's views of society are evidently derived from the Old Bailey.

"If he appeared in such an habit, he must," says your Lordship, "have appeared, to *any rational person*, fully blazoned in the costume of a crime." Permit me to ask by what authority did your Lordship include me among the number of rational persons in this part of the Charge, and exclude me in all the rest? If I was so mad as to

bring the agent of my iniquity fully blazoned in the costume of his crime, and in the very act of its commission, through the streets of London, in open day, to my own house; if I was so bereft of every faculty of the mind, even of memory, as to have wandered three miles from home in utter forgetfulness of his intended visit, thus exposing him to the necessity of sending a messenger in pursuit of me, and affording time and opportunity to those whom it concerned to have caught him under my own roof with the costume of his crime on his back; for "it is impossible to conceive," said Sir Simon Le Blanc, "that he should have changed it before I did come home;" if I was so perfect a maniac as to array him in my own coat and hat, and send him away with "the costume of crime" in a bundle, instead of instantly reducing it to ashes; and if I was so decidedly insane as to invite my own conviction, by proclaiming the name of my accomplice,* and voluntarily disclosing that I had given him a change of dress; for what reason did your Lordship, though but for a moment, represent me to the Jury as a rational person? I cannot conceive why your Lordship should so suddenly restore me to my senses, just at last, unless it be that an apprehension existed that the Jury had not wholly lost theirs; and that they were still rational enough to know, that where there was no reason there could be no crime, and that a man without a head was not qualified for the Pillory.

Your Lordship continued, "this circumstance is therefore very important for your consideration; the judgment to be formed upon it must rest with you," (p. 487). So that after all, as the Solicitor General observed, during the debate on Lord Ebrington's Motion,

* Cautioned, too, as I was by that accomplice! "You cannot have forgotten that I told you, that so long *only* as you were honourable in concealing my name, I was determined to stand or fall with you." (De Berenger's Letter of the 11th of July.)

the Jury were left to draw their own conclusions! Your Lordship, however, did not fail to instruct them a little further—"And you will no doubt consider, whether, "*supposing* him to have appeared before Lord Cochrane; "dressed as the witnesses represent him to have antecede-
 "dently been, the circumstance of his so appearing in a
 "dress proper for the commission of such a Fraud as
 "appears to have been committed on that day, by
 "attracting a false belief of the person being a mes-
 "senger bringing great public news, coupled with the
 "fact of his afterwards walking off with *that dress* in a
 "bundle, instead of having that dress upon his back, and
 "also with the evidence given in order to prove a con-
 "nexion with the notes afterwards found in De Berenger's
 "desk, you are not satisfied that he was privy to and
 "assisted in the scheme of effecting a deception upon
 "the public," (p. 487). I think it impossible to read
 the above passage without a momentary perplexity. One
 cannot at first glance, nor perhaps without consulting a
 dictionary, perceive distinctly what is meant by the
 word "*supposing*," which may possibly be the reason
 that some of the reporters omitted it, in order, I imagine,
 to reduce your Lordship's meaning to *certainty*. It is
 not that your Lordship should *suppose* any thing that was
 not in evidence, in opposition to that which was in
 evidence, that creates the difficulty; but since it is on
 all sides admitted, that, whatever was the habit in which
 De Berenger appeared before me, it was that with which
 he "walked off in a bundle," it seems inconsistent that
 your Lordship should boldly denominate it a *fact* that
 the dress with which he walked off in a bundle was
 "the costume of his crime," and yet merely venture to
suppose that he had appeared before me in that habit.
 But by a natural application of *three* out of the six
 meanings of the verb "*suppose*," as given by Dr. John-
 son, this apparent inconsistency is immediately recon-
 ciled; and at the same time your Lordship's share in the

supposition, and that which appertained to the Jury, appear to be ascertained. "To suppose," says Dr. Johnson, "is to put one thing by fraud in the place of another; 'to admit without proof,' (Tillotson); and 'to believe 'without examination,' (Milton)." If then your Lordship, by "*supposing* him to have appeared before me, "dressed as the witnesses represented him to have *antedecently* been," instead of in the dress in which, according to the only evidence to the point, he did actually appear, did, in effect, "put one thing, &c. in "the place of another," namely, *supposition* in the place of *evidence*, and a *scarlet* coat in the place of a *green* one; and if the Jury were also to *suppose*—if they were to adopt your Lordship's supposition, "to admit it "without proof, and to believe it without examination;" there can be no difficulty in reconciling the modest supposition with the bold assertion which immediately followed; and the Jury might, without any hesitation, obey your Lordship's instructions, and "*couple*" them together.

That your Lordship's "*supposing*" was not intended to convey a doubt, is evident from another consideration. Your Lordship did not say a single word to the Jury about supposing any thing to the contrary. The supposition of De Berenger appearing in the dress described in my Affidavit, the only evidence to his presence in any dress, was not "the very important circumstance for their consideration." It was upon the supposition of his appearing before me in the "costume of his crime," and upon that supposition magnified into "the circumstance "of his so appearing,"—"coupled with the fact" (as your Lordship termed it) "of his afterwards walking off with "that dress in a bundle," that their "judgment" was "to be formed." They were 'to admit, without proof,' that he appeared before me in that dress, and 'to believe, 'without examination,' that he walked off with it in a

bundle; and then, considering me accountable for the application of money thrée times removed, they were at liberty "to draw their own conclusions;" they were authorized to "consider" whether they were not "satisfied" that I was "privy to and assisted in the scheme of effecting a deception upon the public," (p. 487).

THE "Evidence given in order to prove a connexion "with the notes afterwards found in De Berenger's desk," (p. 487), was in substance as follows: That Mr. Smallbone the broker paid to me, on the 19th of February, in the presence of Mr. Butt, a draft for the sum of 470*l.* 19*s.* 4*d.* being the balance of a Stock account, (pp. 230, 1). That his assistant, Mr. Lance, took it to the banker's for payment, and returned to me with the produce in bank-notes (pp. 237, 8), consisting, among others, of one note of 200*l.* and two of 100*l.* each, (p. 235). That, on the 24th of February following, these notes were in the hands of Mr. Butt, who on that day employed Mr. Lance to change the two notes of 100*l.* each at the Bank for one pound notes, (pp. 236, 7); some of which were afterwards found in De Berenger's desk. That, on the same day, Mr. Fearn sent his clerk to get change for the 200*l.* note; that the clerk changed it at Messrs. Bond and Pattersall's for two notes of 100*l.* each,* and exchanged them at the Bank for one pound notes (pp. 242, 3), which Mr. Fearn delivered to Mr. Butt, who handed them over to Mr. Johnstone in his presence (p. 244); and that some of these notes were also found in the possession of De Berenger. Mr. Gurney accounted for the *unguarded* conduct of Mr. Butt in paying these last-mentioned notes to Mr. Johnstone in the presence of Mr. Fearn, by supposing an anxiety in

* Mr. Butt assures me that there was no mystery in changing the note of 200*l.* into notes of 100*l.*, before the one pound notes were obtained at the Bank. It was owing to a mistake of the clerk, who being desired to change it for *ones*, understood that he was to get notes of *one* hundred pounds each.

the two former to link themselves inseparably together (p. 51); by which supposition, Mr. Gurney did, I think, set your Lordship the example of "putting one thing, " &c. in the place of another;" namely, a very improbable and foolish kind of anxiety in the place of the most perfect ignorance, on the part of Mr. Butt, of the purpose which those notes were intended to answer.

The innocence of Mr. Butt, or of any other person, cannot, as I observed on a former occasion (p. 556), be so clear to me as my own: but I am confirmed in my opinion by many circumstances. Even De Berenger, in his letters which were published at my instance, did not accuse Mr. Butt, any more than myself, of being originally accessory or privy to the projection and arrangement of the plot. I do not see that it could answer any purpose of De Berenger to extenuate the conduct of Mr. Butt in any degree; and as I have reason to believe that there did not exist even the slightest acquaintance between them, but that, on the contrary, the only occasions (I am informed, not more than two) in which Mr. Butt had been in De Berenger's company, which occurred at dinner at Mr. Johnstone's, had produced a mutual aversion, I cannot help believing that the sort of half-and-half accusation,* in which he joins Mr. Butt's name with mine, is as wholly groundless in Mr. Butt's case as I know it is in my own.

In a general statement of the Evidence on the subject of the bank-notes given by your Lordship (p. 480), I find the following observation: "Originally the 470*l.* draft had been laid down before and paid to Lord Cochrane; it had afterwards got into the hands of Mr. Cochrane Johnstone and of Mr. Butt, for there appeared to be such a communication between the par-

* "Not a little was I surprized to perceive shortly after, that both your Lordship and Mr. Butt had been made acquainted with it." (De Berenger's Letter, 11th July.)

“ties, that you cannot say from whom ultimately it proceeded, but it had been in some sort in the hands of all; and the produce of this check, originally paid to Lord Cochrane, is found in the desk of this man.” (p. 480). Now it nowhere appears in evidence that the original check ever did get into the hands of Mr. Cochrane Johnstone or of Mr. Butt: on the contrary, it was proved to have been paid by the bankers on the day it was drawn (pp. 230, 5), and that Mr. Lance, who received the payment, returned to me with the produce, (pp. 237, 8). Nay, it was perfectly clear from the tenor of the Evidence, that it was sent for payment the moment I received it. How then, my Lord, could the check originally paid to me, have afterwards got into the hands of Mr. Cochrane Johnstone and Mr. Butt? and for what purpose could your Lordship so misrepresent the Evidence, unless to introduce the remark about the extraordinary “communication between the parties?” Nothing could be clearer than that the original check was sent immediately to the bankers upon whom it was drawn, and that the produce was as directly returned through the medium of Mr. Lance, without the intervention of either Mr. Johnstone or Mr. Butt. The original draft was never in the hands of Mr. Butt, and was never even seen by Mr. Johnstone, who was not present during the transaction.

If, however, your Lordship would rather be understood to have meant the produce of the check than the check itself, I have not the slightest objection; and I admit that the greater part of that produce did get into the hands of Mr. Butt, and was “in some sort in the hands of all:” but the meaning of the words, “for there appeared to be such a communication between the parties, that you cannot say from whom ultimately it proceeded,” becomes exceedingly iniquitous by this interpretation, because, in that case, the words “ultimately proceeded” are applicable only to the actual payment to De Berenger; and your Lordship well knew

that there could be no difficulty in saying from whom the money *ultimately proceeded* into his hands. There was not the slightest evidence, or ground to conjecture, that, after Mr. Butt had received the 400*l.* from me, and after they were changed at the Bank for one pound notes at his instance, that one of those notes was ever returned to me, or passed from my hands into those of De Berenger. On the contrary, it was proved by Mr. Fearn, that such of those notes as were brought from the Bank by his clerk, were handed over by Mr. Butt to Mr. Johnstone (p. 244); and I am well convinced that your Lordship had not the shadow of a doubt that the remainder of those notes passed from Mr. Butt to Mr. Johnstone in like manner. The 400 one pound notes were all obtained at the Bank on the 24th of February, and it was in evidence that De Berenger received the sum of 400*l.* from Mr. Johnstone on the 26th, (p. 364). The result is, that your Lordship was satisfied that the whole of the notes in question “ultimately proceeded” from Mr. Johnstone to De Berenger, and that there was no evidence of any privity on my part, or on that of Mr. Butt, to any such payment.

The receipt of money by Mr. Johnstone from Mr. Butt, which the latter had previously received from me, being in itself a circumstance of an harmless and ordinary nature, your Lordship perhaps was doubtful whether it could be legally submitted to the Jury as any proof of a privity on my part, or even of Mr. Butt, to the subsequent application of such money; and *if so*, the extraordinary “appearance of communication between the parties” must, *one would suppose*, have been introduced to supply the deficiency of evidence in this particular. Your Lordship nowhere observed, that ‘since there appeared to be such a communication between the parties, particularly in pecuniary matters, it was more probable that any money paid by Mr. Johnstone to De Berenger might be traced back to Lord Cochrane or to Mr. Butt, than

“ to any other person, whether either of them was a party
 ‘ to the ultimate payment or not :’ but “ there appeared
 “ to be such a communication between the parties,” said
 your Lordship, “ that you cannot say from whom ultimately it proceeded, but it had been in some sort in
 “ the hands of all; and the produce of this check, originally paid to Lord Cochrane, is found in the desk of
 “ this man,” (p. 480). Or in other words (if the produce of the check, rather than the check itself, was intended),
 ‘ So far from there being a doubt that Lord Cochrane
 ‘ was a party to the payment of these notes to De Berenger for the performance of this base exploit, that
 ‘ really, gentlemen, it is impossible for you to say that
 ‘ they did not immediately proceed from his hands into
 ‘ those of De Berenger.’

The whole of De Berenger’s reward, according to the calculation of the Counsel for the prosecution, was 540*l*. (p. 50); and it was, he said, “ a reward from Lord Cochrane, a reward from Mr. Cochrane Johnstone, and a
 “ reward from Mr. Butt,” (p. 53). If Mr. Gurney supposed that it must have been a reward from every person to whom it could be traced previous to its reaching De Berenger, it was also a reward from the Stock Broker, a reward from the Banker, and a reward from the Governor and Company of the Bank of England. And these last-mentioned gentlemen being great holders of Stock, and the one-pound notes which were paid to De Berenger descending uninterruptedly from them without ever reverting to me, I do not see why they were excluded from the list of conspirators. I complain further, that in dividing the reward of 540*l*. into three parts, Mr. Gurney makes my proportion amount to 400*l*., which I think a very inequitable division, since it was in evidence that I did not possess one third of the Stock held by Mr. Johnstone, and that Mr. Butt had more than double the quantity that I held. Even supposing that I ought to

have contributed in an equal degree, there can be no just reason why my note of 200*l.*, and both my notes of 100*l.* each, should be applied to the payment of a debt, of which my proportion could not possibly be more than 180*l.* But according to the rule of *per centage*, which was one of Mr. Gurney's modes of calculation, (p. 50), (for he varied them according to circumstances) it will be found that one of my aforesaid one hundred pound notes would have left a balance in my favour. Does not it strike your Lordship that at least a part of this 400*l.* must have been advanced to Mr. Butt for some other purpose? And if there must at the time have been pecuniary transactions between Mr. Butt and me, unconnected with this supposed payment of De Berenger, was not it as probable that they might extend to the whole sum as only a part of it?

I shall now state the facts of the case generally, as I stated them in the House of Commons; I shall then enter into the particulars, and lastly annex the proofs which I tendered to the House, and which I conceive are sufficient to satisfy every reasonable person.

On the 15th of February, I borrowed 200*l.* of Mr. Butt; on the 19th of February, I received the draft before-mentioned of Mr. Smallbone, and out of the produce of that draft I immediately repaid Mr. Butt by means of the two notes of 100*l.* each. On the same day I went with Mr. Butt to Messrs. Wilkinson and Crosswaites, wine-merchants, and after tasting a variety of wines, which occupied nearly two hours, I gave them an order to the amount of near seven hundred pounds, for wine to be sent on board the Tonnant. On the 22d or 23d of February, I entrusted Mr. Butt with the sum of 1,200*l.* (including the note of 200*l.*) for the payment of the wine-merchant's account, and any other ship-bills that I might direct him to discharge; on the 24th of February, Mr. Butt appears to have passed the two notes

of 100*l.* each, and the note of 200*l.* to Mr. Johnstone; on the 8th of March he paid the wine-merchant's bill, and not receiving any directions from me to discharge any other accounts, (which my unexpected return to town on the 9th enabled me to attend to in person) he shortly afterwards returned me the difference between the amount of that bill and the 1200*l.* which I had deposited in his hands.

The first transaction, that of borrowing 200*l.* of Mr. Butt on the 15th of February, was, as it appears to me, sufficiently proved at the trial: your Lordship, however, thought otherwise. It was shewn by Mr. Lance, the assistant or partner of Mr. Smallbone, that on the 15th of February I had a payment to make in the city (p. 239), and that I had occasion to borrow the money, having left my own at the west-end of the town (p. 239, 40); that Mr. Lance advanced 450*l.* (p. 239), and that I wanted 200*l.* more, (p. 240). And Mr. Lance deposed, that he understood from Mr. Butt, not at any subsequent period, but on that day, the 15th of February, that he had lent me 200*l.* (p. 237, 8); and the witness also stated, that he was told so by myself; on which your Lordship immediately exclaimed, "Then it comes to nothing," (p. 239). So that notwithstanding it was proved that I wanted the money, that I obtained it, that Mr. Butt said at the time that he had lent it, and that I said the same; the fact was so far from being proved, that, in your Lordship's estimation, it came to nothing. I should like to know for what reason Mr. Butt, on the 15th of February, could have mentioned to Mr. Lance that he had lent me the money which it was proved I had occasion for, if he really had not lent it? Was it possible to anticipate on the 15th of February, even supposing the Fraud was then in agitation, and that both of us were parties concerned, that it would be necessary to offer evidence of this nature? It was not, however, till your Lordship heard from the

witness, that he also understood from myself that the money was advanced by Mr. Butt, that your Lordship was satisfied of the non-entity of the Evidence. While it appeared that I wanted the money, that I obtained it, and that Mr. Butt had said he had lent it, there was some evidence of the fact; but, the moment it was understood that I had acknowledged the receipt of it, it was blasted, falsified, and annihilated.

The entire history of this part of the transaction is as follows:—On the 15th of February, Mr. Smallbone, pursuant to an order received the day before, purchased on my account 5,000*l.* Omnium, for money. On the same day I went to his office, with the intention of paying for it; but, on my arrival, I found that I had left the money intended for that purpose at the west-end of the town (p. 240); having brought with me a parcel of small notes, instead of the larger ones, by mistake. I had no thought of borrowing the money, but directed the Omnium to be resold; and the person of whom it was bought, agreed to take back 1,000*l.* which occasioned me a loss of 20*l.* Mr. Butt being then present, or coming in shortly afterwards, was informed of the circumstance, and persuaded me not to dispose of the remainder, as the loss upon the whole would be considerable, saying that he would procure me the necessary sum, but could not at the moment advance it himself. And it was Mr. Butt, in fact, who conducted the whole transaction; although, from the imperfect manner in which the witnesses were examined, it did not so appear at the Trial. He obtained a draft from Mr. Fearn for 2,000*l.* and another from Mr. Lance for 450*l.* (p. 239); advanced 200*l.* himself, which is the loan in question, and asked Mr. Smallbone to make up the difference (p. 240); which (with the exception of 43*l.* 10*s.* which I had with me) he accordingly did, by means of a draft for 811*l.* 10*s.*; and the 4,000*l.* Omnium, which cost 3,505*l.* was paid for by these united sums.

Mr. Fearn's draft was payable at Messrs. Bond and Pattesall's, and was paid on that day, as appears by their books. Mr. Lance's draft was payable at Messrs. Prescott's and Co., and Mr. Smallbone's at Messrs. Jones and Lloyd's, and were paid on that day, as appears by their books.

On leaving the city, I gave directions, that in case I should not return the next day, two India-bonds and as much Omnium should be sold as would repay what was borrowed. On the next day, February 16th, I was engaged with my Solicitor relative to the *Specification*, as appears by the extract from their bill at the end of this Letter; and being thereby prevented from going into the city, Mr. Smallbone, on the morning of the 17th, sold on my account 2,000 India-bonds and 2,000 Omnium, which produced 3,758*l.* 14*s.* 4*d.*; and with that sum he repaid Mr. Fearn, Mr. Lance, and himself; and after deducting the loss of 20*l.* (in the 1,000 Omnium before-mentioned), and his own commission 6*l.* 5*s.*, there remained a balance in my favour of 470*l.* 19*s.* 4*d.*, which he paid in a check on Jones and Lloyd, on the 19th of February, as shown at the Trial; and out of the produce of that check I immediately repaid Mr. Butt the 200*l.* (in two notes of 100*l.* each), which I had borrowed of him on the 15th. The whole of the account, including the Loan by Mr. Butt, in Mr. Smallbone's handwriting, is in my possession, and a copy of it is annexed to this Letter.

With respect to the immediate repayment of the 200*l.* to Mr. Butt, on the 19th of February, which I admit has not been particularly proved, I have first to observe, that it was shewn at the Trial by Mr. Smallbone, that Mr. Butt was present when he paid me the check (p. 230); and it was proved that Mr. Lance went on the same day (in fact immediately) to receive payment at the banker's, and returned to me with the produce, (pp. 237, 8).

Mr. Lance, however, did not recollect whether, on his return, Mr. Butt was present or not; and Mr. Smallbone was not asked the question. But having established a *bonâ fide* loan by Mr. Butt, and having proved that the two notes of 100*l.* each were a part of the balance of that very account for which his 200*l.* was lent, there can, I conceive, be no reasonable doubt that they were paid to him immediately in discharge of that loan. They were proved to have been in his possession on the 24th of February, and exchanged at the Bank for small notes, at his instance, and not mine. Whether he had any secret purpose in so doing, or was the unsuspecting agent of another, I have already expressed my opinion. Not one of the small notes was ever in my possession, nor were the original notes of 100*l.* each ever in my pocket. There is no circumstance of which I have a more distinct recollection than that of handing them over to Mr. Butt, in payment of the 200*l.* borrowed, the moment I received them from Mr. Lance on the 19th of February; and that they were ever exchanged at the Bank, or applied in any way as a reward or payment to De Berenger, was utterly unknown to me till subsequent to his apprehension.

Of the similar application of the note of 200*l.*, also the produce of the above-mentioned check, I was equally ignorant, and for a still longer period. It was not till very shortly before the Trial, that I had the least intimation or idea that the produce of that note had also been traced to De Berenger: and it was not even attempted to be accounted for at the Trial, because it was not till after my arrival at *this place* that I could call to mind in what manner that note passed into the hands of Mr. Butt. I am indebted to my uncle, the hon. Basil Cochrane, for urging my recollection on this subject, and particularly putting the question, whether I had not, at any period subsequent to the 19th of February, deposited in Mr. Butt's hands any money for the payment of my ship

bills? And I was then "struck as by electricity" with the recollection of the fact of having paid into his hands a thousand pound note, and a *two hundred pound note*, for that express purpose. By documents tendered to the House of Commons, and which are now annexed to this Letter, it is proved that Mr. Butt did accordingly, on the 8th of March, pay to Messrs. Wilkinson and Crosswaite nearly seven hundred pounds, for wines shipped on my account on board his Majesty's ship Tonnant.

The payment of my wine-merchant's bill by Mr. Butt is reasonable proof, and would, I apprehend, be held sufficient in law, of his previously receiving money from me; and although it is no proof that the two hundred pound note in question was a part of the sum he so received, I am now only anxious to be believed by those who are satisfied with the next best evidence, when demonstration cannot be had. That it is exceedingly probable that the note in question was a part of that sum, appears, I think, from the following circumstances. It was proved at the Trial, that the said note was a part of the produce of the check which I received from Mr. Smallbone on the 19th of February; and it is proved by the documents annexed, that the wine for which Mr. Butt paid, was ordered on that day in Mr. Butt's presence. I may reasonably, then, be supposed to have had that note in my possession at the time when I gave money to Mr. Butt to pay for that wine, which I did, according to his statement, supported by that of the wine-merchant, on the 22d or 23d; and it was proved at the Trial that Mr. Butt was possessed of that note, and exchanged it at the Bank on the 24th. The money for the wine-merchants must have been paid to Mr. Butt between the 19th and the 24th: it could not have been prior to the 19th, because the wine was not ordered till that day: it could not have been later than the 24th, because it appears by the papers annexed, that, on or before that day, Mr. Butt desired them to

make out their bill, and expressed himself ready to pay it as soon as the wine was shipped. They did accordingly make out the bill, which bears date the 24th, and the wine was shipped on or about the 26th. The bill was not sent in to Mr. Butt till on or after the 2d of March, and it was actually paid by Mr. Butt on the 8th. My return to town on the 9th, rendered it unnecessary to trouble him with the payment of any more of my ship bills; and therefore he did, as I before stated, return me the difference, amounting to 500*l.* and a fraction. I have only to add, that I have now a distinct recollection, that when I paid to Mr. Butt the twelve hundred pounds, the note of 200*l.*, part of that sum, was the only note of that value then in my possession.

The Counsel for the Prosecution, as an argument against Mr. Butt, quoted a letter from him to the *Morning Chronicle*, dated the 18th of April, in which he stated, that the circumstance of the notes would excite no suspicion, when it was known in what manner they came into the possession of De Berenger: "Then," said Mr. Gurney, "Mr. Butt knows in what manner De Berenger became possessed of these notes: I call upon Mr. Butt to tell you how they came into De Berenger's possession," (p. 53). Mr. Butt, however, I am firmly persuaded, could only have told Mr. Gurney the story he had heard from Mr. Johnstone, that he paid them for work done by De Berenger as a draughtsman; and I am much deceived, if, prior to the apprehension of De Berenger, Mr. Butt had the least reason to believe that any one of those notes had ever been paid him for any purpose whatever. Whether the account of the payment being made for the drawings (which, according to the evidence at the Trial, might be worth upwards of two hundred pounds), (p. 408), had any truth in it or not, I have no doubt that, when Mr. Butt wrote the letter to the *Morning Chronicle*, he believed it to be true.

Not very remote from this subject, is a memorandum said to have been found in De Berenger's letter-case, and brought forward in evidence by the Counsel for the Prosecution. It was read as follows: "To C. J. by March 1st, 1814, 350*l.*—4 to 5,000*l.*—assign one share of Patent, and 1,000*l.* worth shares of Jn. de Beau-fain, at Messrs. H. to their care. Believe, from my informant, 18,000*l.* instead of 4,800*l.*;—suspicions that Mr. B. does not account correctly to him as well as me—determined not to be duped—no restrictions as to secrecy—requesting early answer," (p. 224). "These," said the prosecuting Counsel, "are evidently the heads of a letter to Mr. Cochrane Johnstone," (p. 50); and Mr. B. according to his interpretation, means Mr. Butt. "I should tell you, gentlemen," said Mr. Gurney, "that Lord Cochrane, Mr. Cochrane Johnstone, and Mr. Butt, allege that their gains were not quite so great as the Committee of the Stock Exchange estimate them to have been. They say that the gains of the three were but 6,500*l.*, of which Lord Cochrane's share was 1,700*l.*, and Mr. Cochrane Johnstone's and Mr. Butt's were 4,800*l.* Mr. Butt was the person who transacted the business, being more a man of figures than the other two, and acting as their agent, he had rendered his account to Mr. Cochrane Johnstone; and it should seem as if Mr. De Berenger's compensation was a per centage upon their gains, for he writes thus: 'Believe, from my informant, 18,000*l.* instead of 4,800*l.*;' he thinks their profit was four times as much as they say; 'Suspicions that Mr. B.'—who can that be, except Mr. Butt?—'does not account correctly to him as well as me—determined not to be duped—no restrictions as to secrecy—requesting early answer,'" (p. 50). Now it certainly is not my business to dispute the authenticity of this memorandum, nor its interpretation by Mr. Gurney; for if they were really the heads of a letter from De Berenger to Mr. Johnstone, and if they refer to the

transactions of the 21st of February, and if, by Mr. B. was intended Mr. Butt, there are not, I am convinced, many candid persons who would not incline to acquit me, on the single testimony of this memorandum. If I had been a party concerned, why was not De Berenger entitled to a per centage upon my gains as well as upon those of Mr. Johnstone and Mr. Butt? Why then was my name or its initial, and the amount of my profit, omitted? The learned Serjeant however, who officiated as my Counsel, contented himself with saying, "that cannot be evidence against the Cochrane," (p. 224). He might have said, that it furnished a very strong argument in favour of *one* of the Cochrane; and he was only prevented, I am convinced, by a sense of duty to other clients. Here is another striking proof of the injustice that was done me in endeavouring "to link me inseparately" to Mr. Johnstone, by blending the Defence contrary to my positive instructions. If this memorandum be *authentic*, and truly interpreted, it furnishes stronger presumption of my innocence than of Mr. Butt's guilt. It may, however, be explained, even admitting "Mr. B." to mean "Mr. Butt," without furnishing any inference unfavourable to that gentleman; for if the profits of Mr. Johnstone be taken at the estimate made by the Stock Exchange Committee, and stated in evidence by Mr. Bailey (p. 186), namely, 4,931*l.* 5*s.* it surely is not necessary to include the profits of Mr. Butt in order to make up the sum of 4,800*l.*; and then the effect of the memorandum is no more than this: that Mr. Johnstone had stated his profits to De Berenger at 4,800*l.*; and the latter having heard from his informant (who can that be, my Lord?) that they amounted to 18,000*l.*, and understanding (probably from the same informant), that Mr. Butt kept accounts for Mr. Johnstone, was suspicious that he did not account correctly; which was the same thing to De Berenger, if he was to be paid by a per centage on Mr. Johnstone's gains, as not accounting correctly to himself. It is more probable,

however (if these were really the heads of a letter to Mr Johnstone on this subject), that he artfully affected that suspicion of Mr. Johnstone's supposed accountant which he really entertained of Mr. Johnstone himself. His *delicate* hint at a disclosure in the event of being "duped," as the words "no restrictions as to secrecy" may very well be construed, is consistent with this explanation.

If the words, "suspicions that Mr. B. does not account correctly to him as well as me," must be understood to imply a direct accounting from Mr. Butt to De Berenger, let the latter, who can hardly be suspected of destroying any paper that might eventually be useful, produce such accounts, and I shall content myself with defending my own case. But in the mean time I think it due to Mr. Butt further to observe, that with the exception of his advancing the money to Mr. Johnstone with which the latter appears to have paid De Berenger, the memorandum above mentioned is the only evidence that I can find, on a careful perusal of the Trial, by which *so much as the initial of Mr. Butt's name* is implicated in the offence for which he is now suffering: and this memorandum, let it be remembered, was admitted by your Lordship to be no evidence at all, unless against De Berenger, (p. 224). And with respect to the advance of money to Mr. Johnstone, it is well known to me that the latter frequently applied to Mr. Butt for pecuniary accommodation; in proof of which it may be observed, that 1,498*l.* 11*s.* 8*d.* was repaid to him by Mr. Johnstone on the 19th of March, by a draft on Morland, Ransom and Co., and I understand that Mr. Johnstone is still indebted to Mr. Butt to a considerable amount.

I cannot dismiss the memorandum without observing, that I am too well convinced that my own case does not now require the support that might have been

drawn from its interpretation at the Trial, to be afraid of suggesting another solution. Why should there be two distinct mysteries in this one memorandum? and why may not the sums mentioned in the latter part relate to the value of the articles mentioned in the first? and why should "Mr. B." mean "Mr. Butt," who was not previously mentioned, rather than "John de Beaufain," whose name appears immediately before, and for which "Mr. B." is no improbable contraction?

I have already shewn that there are several passages in the Affidavit which your Lordship did not recite, or in any way recall to the consideration of the Jury. Among others is the following: "Further, I do most solemnly swear, that the whole of the Omnium on account, which I possessed on the 21st day of February, 1814, amounted to 139,000*l.*, which I bought by Mr. Fearn (I think) on the 12th ult.* at a premium of 28½; that I did not hold on that day any other sum on account in any other Stock, directly or indirectly; and that I had given orders, when it was bought, to dispose of it on a rise of one per cent.; and it was actually sold, on an average, at 29½ premium; though, on the day of the Fraud, it might have been disposed of at 33½." Here,

* As there was an error in my recollection of the date, and as the whole sum was not purchased on one day, I think it proper to subjoin the particulars of the account, which I did not think it necessary to enter into the Affidavit, nor indeed had time to refer to them, in the haste in which it was prepared.

Bought.			Sold.		
1814.	£.		1814.	£.	
Feb. 14.	100,000	at 28½	Feb. 17.	50,000	at 27½
16.	12,000	... 26½	19.	17,000	... 27½
—	38,000	... 27½	21.	66,000	... 29½
18.	6,000	... 28	—	8,000	... 29½
—	13,000	... 27½	—	58,000	... 29½
—	16,000	... 27	—	7,000	... 30½
—	1,000	... 26½			
19.	20,000	... 27½			
	<u>£.206,000</u>			<u>£.206,000</u>	

among other fair and favourable observations, your Lordship might have made a distinction between my case and that of Mr. Butt, who held more than twice that quantity of Stock; and again between my case and Mr. Butt's, and that of Mr. Johnstone, who held nearly double the quantity of Mr. Butt, and nearly four times the quantity held by me. If, however, I conceive that I have some right to complain that your Lordship was not in a distinguishing mood on the occasion, I am not the less obliged to confess that my furious assailant, Mr. Gurney, may have reasonably felt himself disappointed at receiving no distinguished mark of approbation for the following "very pointed" and accurate observation: "Their purchases were the same, their sales the same, they seemed in these Stock speculations to have but one soul,"* (p. 29). The sameness of the purchases, and the sameness of the sales, producing such disproportionate balances, was certainly a very striking discovery, and worthy of something more than silent admiration.

With respect to the identity of soul, Mr. Gurney had another observation, which also passed unquoted and uncommended, though *not unimproved*, by your Lordship. "They are one and the same," said Mr. Gurney; "there is an identity between these three persons that hardly ever existed; they have but one mind, they are inseparably connected," (p. 54). On reciting the evidence of Mr. Hitchens (Mr. Johnstone's broker), a person wholly unknown to me, your Lordship observed, "He states Mr. Cochrane Johnstone's balance on this and different days, and it appears that THEY had been dealing in the Funds with a view to this particular day," (p. 500); by which it appears to me, that your Lordship

* "If one bought twenty thousand," continued Mr. Gurney, "the other bought twenty thousand; if one bought ninety-five thousand, the other bought ninety-five thousand; you will find the act of the one the act of the other, &c." (p. 29).

R

identified me and Mr. Butt with Mr. Johnstone, *body as well as soul*—‘*Tria juncta in uno.*’ But, notwithstanding this confusion, I have a distinct and perfect consciousness of never having speculated with a view to that or any particular day. Mr. Gurney had indeed asserted, that his employers had made many great discoveries, and among others, that they had found me to be a deep speculator in Omnium, and that I had been so for *one week* only (p. 29); but unless your Lordship did not only mistake that assertion for evidence, but conceived that it proved more than it expressed, and forgot that it was in evidence that that assertion was false (p. 167), I will venture to affirm that it did not appear, even to your Lordship, from any evidence in the cause, that I had dealt in the Funds with a view to that particular day. Your Lordship’s assertion, however, was of a deeply criminating tendency, and must convict *somebody*—either of Fraud and Perjury, or of misrepresentation and injustice.

“For a length of time,” added your Lordship, “they all had their hands full of Omnium and Consols; and the Omnium having obtained a price which would allow of a profit, all was sold; and the object appears to have been as much to raise the price a little, so as to get out without present loss, as to gain a profit,” (p. 500). The prevention of any possible loss on my comparatively small account; a loss which, on the 19th of February (when the Fraud must have been in contemplation), could not have amounted to *a tenth* part of the sum previously gained, must have been a very inadequate motive for the commission of a crime, which I must have known would, if discovered, be ruinous to my character and prospects for ever. Your Lordship, however, was pleased to cram my hands as full of Omnium and Consols as theirs who held more than twice or thrice my quantity, and to make it our *joint-object to raise the price*: and here, as indeed

throughout the whole Charge, your Lordship assumed the guilt of the *three* defendants.

"They appear," said your Lordship, "to have had a larger balance, at least Mr. Cochrane Johnstone appears to have had, on an antecedent day than he had on the 21st of February," (p. 500). Your Lordship was aware in which of the three cases it was the most safe to be candid; for your Lordship knew that I also had a larger balance on an antecedent day; and so indeed had Mr. Butt, if not in Omnium, yet upon the whole. "But it appears," added your Lordship, "as if they not only were speculating on what they were buying, but they were speculating to such an amount, that, unless they got rid of it, every one of them might be ruined," (p. 500). I was not aware, that when the Attorney General asserted in the House of Commons that I was obliged to have recourse to fraud to put off absolute ruin, he could have pleaded such high authority for so foul an aspersion. My answer to the Attorney General appeared in an Address to the Electors of Westminster (which is re-printed at the end of this Letter), and to that I refer your Lordship.

In stating the evidence of Mr. Baily of the Stock Exchange, your Lordship did not omit to mention the "*GROSS amount of the balance of ALL THREE.*"* "The

* If it was the duty of the Judge to abstain from recapitulating any portion of the evidence, or to recite it only to reprobate it, it must have been such evidence as the two following questions of Mr. Gurney were calculated to extract:—"Now, what was the *gross amount of their account of balances on that day?*" and, "As we are not so well acquainted with Omnium as you are, if that were reduced to Consols, what would they have amounted to?" (p. 185). To be sure, it may be asked, if his Lordship was not justified in impressing upon the Jury the answers to such questions as these, why did he permit them to be answered at all?

“ gross amount of the balances of all three was 759,000*l*.
 “ Omnium, and 278,000*l*. Consols, which would make,
 “ he says, if the whole amount were reduced to Consols,
 “ and calculated as Consols, 1,611,430*l*. 3 per cents. Of
 “ that quantity of Stock, they were holders on the 21st
 “ of February,” (p. 501). And the numerical amount
 would have been still greater if reduced into shillings :
 and why not into shillings, or even farthings, as well as
 3 per cents.? To have commented a little upon the ine-
 quality of the different accounts, and upon the improba-
 bility of an illicit partnership, in which the danger of
 each was the same, while the respective objects were so
 disproportionate, instead of astonishing the Jury with the
gross amount of the balances of *all three*, would, I hum-
 bly conceive, have been more consistent with your Lord-
 ship’s dignity and duty.

This *triple* account, though *tricked* out to the best
 advantage, makes no extraordinary figure when contrasted
 with the subsequent speculations of a single individual,
 who, in the hurry attendant on the execution of his various
 employments, as an East-India Director, Marshal of the
 Admiralty, and Member of Parliament,* forgot to pay
 his differences at the Stock Exchange, amounting to more
 than 40,000*l*. Whether this gentleman was a speculator,
 or to what extent, on the 21st of February, I am not in-
 formed; but if the disinterested Committee of the Stock
 Exchange, who “ gained nothing but honour ” by the
 late Prosecution (and certainly not much of that), would
 furnish the public with the names of the principal dealers
 on the day of the Fraud, a conjecture might be formed
 whether the messenger who *first* arrived with the false
 news on that day (for De Berenger only came *second*), and
 was seen to enter the gate of the Admiralty, was not em-

* This gentleman was *not* in the minority on the Motion for my
 Expulsion.

ployed and protected by any of the virtuous gentlemen in official capacities.

The arrival of a pretended officer in a post-chaise-and-four at the Marsh-gate, on the morning of the 21st of February, three hours previous to the arrival of De Berenger, with precisely the same news, and his proceeding immediately to the Admiralty, are facts which I think I could not fail to establish by evidence now in my possession: but my present business is not to shew who have undeservedly escaped, but who has been unjustly condemned. I cannot, however, help observing, that even your Lordship expressed an opinion at the Trial, that the communication made by De Berenger at Dover, had reached town before De Berenger himself. "Some such cause," said your Lordship, "appears to have operated; so that the Stocks were at 29 early in the morning," (p. 499). In truth, there is great reason to doubt whether the part which he undertook to perform was any other than that of procuring the use of the telegraph; and, failing in that, whether his return to London ever affected the Funds at all. His quitting the post-chaise at the Marsh-gate, and proceeding privately in an hackney-coach to Green-street, instead of going to the Admiralty, as the messenger from the first post-chaise had done, or parading through the city, as the third arrival afterwards did, was a mode of proceeding better calculated to conceal his own person, than to give publicity to the false intelligence. If his arrival in London ever had the effect of raising the Funds, it was probably his second arrival after his arrest at Leith. It is well known that the members of the Stock Exchange were in high spirits on that occasion; and the apprehension of *an alien dangerous to the state*, occasioned great rejoicings in the ministerial offices; and very justly, for it must ever be ranked among the brilliant achievements of the present ministry.

+

R 3

There is much in your Lordship's conduct during the examination of the witnesses, and much in the Charge to the Jury, which require very particular animadversion, but which cannot be noticed in the compass of the present communication. I have reason, however, to hope, that I shall omit no point of importance that will not be properly presented to the public at no very distant period: a very able friend of mine assuring me, that he has made considerable progress in a work in which the whole proceedings will be minutely investigated. I shall therefore conclude the present epistle with a few observations on the very remarkable conduct of your Lordship, in denying to the Counsel for the Defendants, when exhausted with long attendance and fatigue, the respite of a few hours for repose and preparation for the Defence. And first, it will be necessary to copy the dialogue which took place between your Lordship and those gentlemen as soon as the case on the part of the Prosecution had closed.

Mr. Serj. Best.—I wish to apprise your Lordship, that I think it will be necessary for the Defendants to call witnesses.

Lord *Ellenborough*.—I should wish to hear your opening, and to get into the Defendants case, if I can: *there are several gentlemen attending as witnesses, who I find cannot, without the greatest public inconvenience, attend to-morrow.*

Mr. Park.—The difficulty we feel, I am sure your Lordship will feel as strongly as we do the fatigue,* owing to the length of our attendance here; but we will proceed, if your Lordship desires it.

Lord *Ellenborough*.—*I would wish to get into the case, so as to have the examination of several witnesses,*

* Mr. Park would not have expressed himself so incorrectly, if he had been in the full possession of his faculties.

upon whom the public business of certain offices depend, gone through, if possible.

Mr. Park.—I have undergone very great fatigue, which I am able to bear; but I would submit to your Lordship the hardship upon parties who are charged with so very serious an offence as this, if their case is heard at this late hour; and then a fresh day is given to my learned friend to reply.

Lord Ellenborough.—It will not be a fresh day, when you will be here by nine o'clock, and the sun will be up almost before we can adjourn; I will sit through it, if you require it, rather than that, (pp. 254, 5).

I do not apprehend, my Lord, that the "greatest public inconvenience" that could possibly have arisen from the attendance of any of the witnesses on the next day, was an adequate reason for compelling the Counsel for the Defendants, in a question involving their character, prosperity, and peace to the end of their existence, to enter upon the Defence after fifteen hours attendance, when it was hardly possible to expect either argument or eloquence from the Counsel, or attention from the Jury. But this is not all: the reason assigned by your Lordship for a proceeding so injurious to the rights of the Defendants, was not only frivolous, considered as a reason; but it was no reason—it was a mere pretence. I have your Lordship's own authority for asserting that it was not the true reason: for lo! no sooner were the speeches for the Defendants concluded, than your Lordship roused the Jurymen by exclaiming, "Gentlemen of the Jury! *It appears to me this would be the most convenient time for dividing the cause, as the Evidence will occupy considerable time probably. I cannot expect your attendance before ten o'clock!*" (p. 333). So that your Lordship, who wished to hear the speeches for the Defence at that late hour, for no other reason, forsooth, than to proceed to "the examination of several witnesses, upon whom

" the public business of certain offices depended," and who could not, "*without the greatest public inconvenience,*" attend the next day, finds it "*the most convenient time for dividing the cause*" as soon as those speeches had been delivered, and *before one of those witnesses were examined!* It was no longer inconvenient for the public officers to come again to-morrow! And truly, if any great public inconvenience did result from the attendance of my Lord Melville* on the next day, or even of my Lord Yarmouth, it appears to have fallen so lightly, by an equitable distribution, I suppose, among the public at large, that I have not yet heard that any individual has complained of his share of the grievance.

The reason assigned by your Lordship for finding it " the most convenient time for dividing the cause" between the Defence and the Evidence, namely, "*as the Evidence will occupy considerable time probably,*" is, I am afraid, equally distant from the truth; or why did not it occur to your Lordship before? And where was the necessity of going through the whole of the Evidence? Had not your Lordship declared that your object was merely to *get into* the Defendants case, and to examine those witnesses *only* on whom " the business of the public offices depended?" and as to the length of time which their Evidence might occupy, your Lordship was just as able to guess at it before the Defence as afterwards. Where then, my Lord, are we to look for the truth? I believe it may be found in my Defence in the House of Commons, which has been so much condemned by your Lordship's learned friends, the Attorney and Solicitor-General, for certain obnoxious passages which are supposed to reflect upon your Lordship! It was

* If the Lord Chief Justice had not a seat in the Cabinet, might it not have been politic in the Ministry to have ascribed the *failures on the Lakes* to his Lordship's change of opinion? I have not heard of any better excuse.

therein stated, that your Lordship "urged, and in fact
 "compelled, the Counsel to enter upon my Defence
 "after midnight, at the end of fourteen hours from the
 "commencement of the Trial, when that Counsel declared
 "himself exhausted, and when the Jury, who were to
 "decide, were in a state of such weariness as to render
 "attention to what was said totally impossible. The
 "speeches of the Counsel being ended, the Judge, at
 "three in the morning, adjourned the Court till ten; thus
 "separating the Evidence from the Argument, and re-
 "serving his own strength and the strength of my adver-
 "sary's advocate for the close; giving to both the great
 "advantage of time to consider of the Reply, and to
 "arrange arguments to meet those which had been
 "urged in my Defence." It was added, and I believe
 truly, "by this means, too, another important object was
 "secured. From the lateness of the hour at which the
 "Counsel were compelled to enter on my Defence,
 "it was impossible that that Defence should appear
 "the next day in print, while the speech of the
 "Advocate by whom I was accused would appear at
 "full length. The object was completely attained;
 "and thus were the public, by seeing hardly a word in
 "my defence, while so much was urged against me,
 "prepared to approve of the Verdict which was given
 "the next day."

In the conversation before recited, Mr. Park sub-
 mitted to your Lordship "*the hardship upon parties who*
 "*are charged with so very serious an offence as this, if their*
 "*case is heard at this late hour; and then a fresh day is*
 "*given to my learned friend to reply.*" And I must again
 recite your Lordship's answer, in order to introduce an-
 other observation upon this most extraordinary part of
 your Lordship's conduct. "*It will not be a fresh day,*
 "*when you will be here by NINE o'clock, and the sun will*
 "*be up almost before we can adjourn; I will sit through*

" it, if you require it, rather than that," (p. 255). But what did your Lordship say on dismissing the Jury, when the Defendants Counsel had finished, which occurred at three o'clock in the morning? "*I cannot expect your attendance before TEN o'clock,*" (p. 333). And thus an interval of SEVEN hours was allowed to the Counsel for the Prosecution, and yet it was not a *fresh* day! Had your Lordship done me the justice to adjourn the Court at 12 o'clock at night, and then have allowed my Counsel only the same interval of seven hours to prepare for the Defence, it would have been a fresh day even by the almanack; and I dare say your Lordship would so have considered it. But allowing your Lordship the benefit of the distinction, and that it was still the same day at 10 o'clock in the morning as it was at 3 o'clock, and that Mr. Gurney had not the advantage of a fresh day to reply, he had still the advantage of being fresh and unfatigued when he opened the proceedings on the first day; and why was the defence to be made under worse circumstances than the attack?

Mr. Serjeant Best commenced his speech by assuring the Jury, " that he was extremely sorry on his own account, and still more sorry on their account, that it would be necessary for him, IF HE WAS ABLE TO DO IT, to take up a considerable portion more of their time in the discussion of this most important question," (p. 256). And towards the conclusion he thus expressed himself: " Gentlemen, I am conscious, that, *fatigued as I felt myself when I rose to address you, after having been thirteen or fourteen hours in Court, I have very imperfectly discharged the duty which I owed my clients*; but, gentlemen, I hope they will not suffer from not having their case presented to you as it ought to have been," (p. 291). The learned Serjeant was not only not in a situation to do all that was necessary to be done, but he relied rather too much on your Lordship's assistance: for

he observed in the commencement, "Whatever I shall not be able to impress upon you in the manner it ought to be impressed upon you, will be brought to your consideration by his Lordship; and *that explanation which I shall feel myself unable to give*, he will be in a situation to give," (p. 236). The learned Serjeant, it should seem, had not wholly divested himself of the obsolete notion that your Lordship, as Judge, was, in some sort, of Counsel for the Defendants.

To be just, however, to the learned Serjeant, as well as to myself, I shall recite a few more of his observations, which appear to me full as pointed as any which your Lordship quoted from the speeches of the Counsel for the Prosecution, and some of which I think your Lordship might very fairly have recalled to the consideration of the Jury, especially as those gentlemen had not only slept subsequent to, but, if I am not grossly misinformed, during their delivery. "It was suggested," said Mr. Serjeant Best, "by my learned friend, Mr. Gurney, that he should trace some of the notes found in the desk of De Berenger into the hands of my Lord Cochrane. I beg to state that there is not a single note traced into the hands of my Lord Cochrane," (p. 259). "Gentlemen, but for my Lord Cochrane, the Stock Exchange never would have known of the existence of any such person as De Berenger; but for my Lord Cochrane, it is impossible that the Stock Exchange could have instituted this Prosecution, because it was by Lord Cochrane's Affidavit only that the name of De Berenger was given to them," (p. 266). "If guilty men, knowingly and advisedly, point out to their Prosecutors the only course by which they can be hunted down, such guilty men must be men of too weak understandings to be answerable for their conduct either to God or their country," (p. 267). "What reason has my learned friend given you to-day? What

" reason can you collect from the former life of this
 " noble person (for he has been before you, and has
 " lived in the view of the public), that can induce you to
 " believe, that he is so completely lost to all sense of that
 " which is right and wrong, to all sense of what is due to
 " himself, as to go before a magistrate to make an
 " Affidavit, in which he must have known that he was
 " deposing to that which, at the time he was making the
 " deposition, was absolutely false? Gentlemen, I ask you
 " what evidence you have upon which you are to find
 " this noble person not only guilty of a foul conspiracy,
 " but also of the still higher crime of wilful and corrupt
 " perjury?" (p. 269). " The oath of Lord Cochrane
 " makes the evidence offered on the other side kick the
 " beam; there is nothing to put in competition with the
 " Affidavit which my learned friend has himself given in
 " evidence," (p. 269). " If my learned friend could
 " have shewn you, that all that the Affidavit states
 " respecting De Berenger going to America was the
 " invention of Lord Cochrane since the 21st of February,
 " that nothing of the sort had ever been thought of
 " before, such proof would have falsified the Affidavit.
 " But so far from offering any such evidence, all the
 " evidence adduced confirms the statement in the
 " Affidavit; and yet my learned friend still ventures to
 " ask you to disbelieve what Lord Cochrane has sworn,
 " although his oath is unopposed by any testimony, and
 " supported by all the testimony given in the cause,"
 (p. 272). " It is not my business to argue before you that
 " Mr. De Berenger went that morning to Lord Cochrane,
 " expecting to obtain leave to go to America; it is enough
 " for me that I satisfy you, that he pretended that that
 " was the object of his visit," (p. 273). " If it was not
 " for this purpose, or if this was not the pretence on
 " which Mr. De Berenger went there,—he was much
 " more intimate with Mr. Cochrane Johnstone than he
 " was with Lord Cochrane,—why did not he go there?

“ Mr. Cochrane Johnstone lived only in the next street ;
 “ if he went to the one house or to the other, because of
 “ a connection between him and these parties in a con-
 “ spiracy, why happens it that he did not go to the house
 “ of the party with whom he was most intimate ?” (p. 273).

Whether your Lordship might not with propriety have recapitulated some of these arguments, I shall not pretend to decide ; but of this I am sure, that there is one sentence in the speech of Mr. Serjeant Best, which contains so important a truth, and at the same time so well known to your Lordship, that it ought not to have escaped your Lordship’s memory and mention, even if it had not been brought forward in argument. It is as follows : “ *The circumstantial evidence that alone can*
 “ *warrant conviction, is the proof of such facts as could*
 “ *not have happened had the accused been innocent,*” (p. 258). If this be so, if this definition be as conformable to law as it is to reason and justice, I have no hesitation in saying that the Jury, who condemned me, were induced by your Lordship to be satisfied with evidence, with which the law was not satisfied. And with respect to the accuracy of the above definition in point of law, I am assured that it is the acknowledged incontrovertible law of circumstantial evidence ; and that, whatever may be the guilt or innocence of the parties who are tried on circumstantial evidence alone, the Judge who omits to bring such evidence to this test, is criminal.

It is not long ago, in the summer, I think, of 1813, that a person named Maxey, was tried at the Norwich Assizes on a charge of having poisoned his wife and daughter. It appears that the evidence was circumstantial only ; and “ his Lordship” (whose name is not mentioned in the newspaper-report from which I copy), “ in
 “ a truly luminous though concise charge to the Jury,
 “ began by explaining to them the nature of circumstan-

" tial evidence, which, when complete in all its parts, he
 " certainly considered to be a most satisfactory species of
 " testimony. But all the links of the chain must be
 " entire, and its connexion with the accused party
 " obvious and necessary, before a verdict of guilt could
 " be justly and conscientiously grounded upon it. He
 " defined a satisfactory circumstantial evidence against
 " any criminal to be, *such a series of circumstances as could*
 " *not possibly have occurred, or be accounted for, otherwise*
 " *than by the guilt of the prisoner.* How far the evidence
 " which had been adduced conformed with this definition,
 " it was the province of the Jury to decide."

I cannot complain that your Lordship left the Jury
 without a definition, but I contend that the definition
 given by your Lordship was not quite so correct as that
 given by the Judge at Norwich.

" The offence of Conspiracy, gentlemen," (said your
 Lordship), " is an offence consisting in a wicked concert,
 " contrivance, and combination of individuals, to effect
 " some public or private injury or mischief; that con-
 " trivance and that combination is not to be collected,
 " nor is it practicable, in the course of human affairs, to
 " collect it from the mouths of the parties assembled for
 " the purpose of communication, but from the *actings*
 " and *conduct* of the several parties, *as they may appear*
 " *generally to conspire and conduce to the same wicked end*
 " *and purpose*; and if it appears to you, from the *actings*
 " and *conduct* of these parties, that they entertained the
 " same common purpose of mischief, and that they have,
 " by their several *actings*, combined and co-operated to
 " the effecting that same wicked purpose, that is sufficient
 " to bring home the imputation of the crime charged
 " against these parties; therefore the Prosecutor need
 " not shew that they have met in common council, or
 " even that they have seen one another before, if their

" *acting* shews they were influenced by one common purpose of mischief, and aimed at the production of the same malignant end and effect," (pp. 448, 9). To this definition or explanation, or whatever it may be called, your Lordship added the following extraordinary illustration: " Suppose persons jointly charged in an indictment with the breaking of an house, are found on different sides of the same house, besetting and endeavouring to enter it at the same time; you need not show that they had actually met, and previously contrived the plan of this joint robbery; the unity of their conduct proved their joint contrivance and concert to accomplish the same end;" (p. 449). This is true; but how did your Lordship make the application? " though indeed this is a case where personal presence at the acts done, renders all intendment of the personal concert of the actors unnecessary," (p. 449). And for that reason it was not a case in point. " The same rules," (continued your Lordship) " which apply to the offence of conspiracy as a misdemeanor, apply equally to all crimes committed by concert up to the crime of high treason, which is often established by evidence of the *distinct actings* of separate parties, breathing the same purpose, and immediately conducing to the same end," (p. 449).

The Reporter employed by one of the Defendants, represented your Lordship as saying, " It was enough for their conviction, to prove that they were found co-operating for the same object;" but as I do not find these precise words in the printed Charge, I do not attribute them to your Lordship. They appear to me, however, to convey the precise meaning of all that I have above quoted. Yet, even according to this rule, I at least ought to have been acquitted, since no co-operation on my part was or could be proved. It was indeed proved that I was *acted upon* by De Berenger subsequent to the

Fraud, but not that I *acted with* De Berenger, *previous to, or in the course of* its commission. According to this rule, however, many an innocent man might be convicted. If it is 'enough for their conviction to prove that 'they were found co-operating for the same object;' or if "the contrivance and combination," and "the same "common purpose of mischief," are to be inferred "from the actings and conduct of the several parties, as "they may APPEAR GENERALLY to conspire and conduce "to the same wicked end and purpose;" if, in short, proof of co-operation is demonstration of Conspiracy, it is pertinent to inquire, (especially if your Lordship knew any thing of the Indictment before it was preferred), Why were not the inn-keepers and post-boys, who co-operated with De Berenger in conveying the false intelligence, included in that Indictment?

It is notorious that, in a plot of any magnitude, some of the minor parts may be perfectly innocent in themselves, and performed by the instrumentality of persons ignorant of the main design. But, by what chance could the Dartford post-boy have escaped conviction, if he had been included in the indictment? It might have been proved by his fellow-servant, or he himself might have acknowledged (and his own deposition might have been brought into Court as evidence against him), that De Berenger had discoursed with him a good deal (p. 110), and with great familiarity; and had authorized him to communicate the intelligence as he returned (p. 111); had told him that he had sent a letter to the Port Admiral at Deal (pp. 111, 12); had given him some cakes and part of a bottle of wine (p. 112); and had remunerated him with two pieces of coin, *tallying* with each other (p. 114), but not tallying with any description of coin usually paid to a Dartford post-boy for any honest purpose, and amounting in value to ten times his ordinary perquisite. Those are things which *did* happen: and might not your Lord-

ship very justly have said (as Sir Simon Le Blanc said of other things, some of which did *not* happen), "Those
 " are things which could not happen by accident?"
 (pp. 593, 4). 'Now, with the acquaintance he had with
 ' De Berenger,' (your Lordship might have added) 'no
 ' doubt such conversation passed as is proved; and he
 ' must have been, one would suppose, familiar with his
 ' hand-writing; and, if so, he could have had no doubt
 ' that that letter to the Port Admiral at Deal was written
 ' in a disguised hand, for the purpose of imposition,' (see
 pp. 482, 3). It was in evidence that he *chucked* away the
 bottle which De Berenger had given him, (p. 112).
 Why should he do that? the *chucking* it away "could
 " have been with no other view than that of suppressing
 " this piece of evidence, and preventing the discovery
 " which it might otherwise occasion:" and *this* (your
 Lordship knows) would have made it 'the more material
 ' to attend to the emptying of that bottle, which took
 ' place, down the post-boy's throat,' (see p. 478). It
 was proved that he was one of the persons who benefited
 by the conspiracy, and by his "acting and conduct he
 APPEARS GENERALLY to have conspired and conduced to the
 same wicked end and purpose," (see p. 448). Besides, he and
 De Berenger, "who had so much to do on that day, were
 " brought together, and had an opportunity of communi-
 " cating together, at least at that time. They go on to
 " London together, after having, it may be supposed, had
 " so much of communication together as was necessary for
 " the current business of the day, whatever that business
 " was," (see p. 481). And though they did not proceed
 to Shooter's Hill in the carriage together, as I did with
 Mr. Johnstone and Mr. Butt to Snow Hill (p. 481), yet
 it might very fairly be asked, Why did Mr. De Berenger
 get out of the carriage and walk up the hill, according to
 Sir Simon Le Blanc's statement of the evidence (p. 590),
 unless to have so much of communication with the post-
 boy as was necessary for the current business of the day?

T

And may not an illicit communication be carried on outside of a carriage as well as inside of a carriage? Nay, might it not gravely be questioned, whether, under such circumstances, the *exterior* mode of communication was not essential to constitute the illegality? Or, whether ~~any~~ communication or *commerce* in the *interior* of a carriage on the *Canterbury-road*, can be contrary to, or even suspicious, in *Law*. If *one might suppose* that your Lordship, for instance, had been caught in a carriage, in company with a familiar acquaintance, or even a near relative (whether by consanguinity or affinity, no matter), journeying on that very road together, after having had "an opportunity of communicating together, "at least at that time," your Lordship, I am sure, would be "struck as by electricity," that nothing could be more fallacious than to infer that such supposed communication must have been "necessary for the current business of the day," or that the business of the one must necessarily have been the business of the other. So far from that, the business of *the one* might have been to conceal contraband goods in that very carriage; while the *business* of your Lordship would have been to have 'owned 'yourself' much shocked with this fraudulent kind of 'practice,' (p. 464), and to have had immediate recourse to your *private* (or, in default of that) to your *public* authority, for the purpose of repressing it.

I have the honour to be,

My Lord,

Your Lordship's humble servant,

COCHRANE.

APPENDIX.

A P P E N D I X.

No. I.

EXTRACT *from a Bill of Messrs. FARRER and Co.*
(Solicitors) *relative to a Specification for a Patent.*

1814.

Feb. 4. Attending your Lordship on a rough
Draft you had prepared of a Spec-
ification for a new Patent, conferring
thereon, and taking your directions
for making you a Copy thereof - -

Copy of the Draft for you accordingly

16. Attending your Lordship, conferring
upon, and taking your directions for
altering and settling the new Draft,
and altering the same accordingly -

22. Attending your Lordship, reading over
the Draft as altered, and conferring
thereon, when you requested us to
lay it before Mr. Nicholson, and at-
tending Mr. Nicholson therewith
accordingly - - - - -

26. Attending Mr. Nicholson on his re-
turning us the Draft, settled and ap-
proved by him, and to pay his Bill -

Paid his Bill - - - - -

Attending your Lordship on the Draft
as settled by Mr. Nicholson, and
taking your directions for ingrossing
the same, and getting the Drawing
ingrossed on parchment to annex
thereto - - - - -

Ingrossing the Specification, fol. 20 -

a

APPENDIX.—No. II.

- Paid for Parchment and Duty - - -
 Paid for a Skin of Parchment for
 Drawings, and Stamp - - -
 Attending Mr. Clarke in Dartmouth-
 street with the Drawings and Parch-
 ment, and to give him directions for
 copying the same thereon, and at-
 tending afterwards to pay his Charge
 Paid his Charge - - -
 28. Attending your Lordship, reading over
 and examining the Ingrossment of
 the Specification for the Patent, and
 attesting your Signature thereto - -
 Attending with your Lordship at the
 Public Office to get the same ac-
 knowledged - - -
 Paid acknowledging - - -
 Attending to get the same inrolled at
 the Patent Office - - -

No. II.

LETTER from RICHARD GURNEY, Esq. to Lord
COCHRANE.

My Lord;

King's Bench, Sept. 9, 1814.

In replying to your Lordship's letter of yesterday, I beg to observe, that several applications have been already made to me from several quarters, for the purpose of obtaining the particulars of the conversation between the Honourable Mr. Murray, another gentleman, and myself, alluded to in your letter, but that I have hitherto refused to comply with such applications, for reasons which must be sufficiently obvious to every delicate and honourable mind. Being requested, however, by your Lordship, to say whether "your name" was said to have been connected "by De Berenger" with the imposition which he had in contemplation," I can no longer hesitate in giving, to the best of my recollection, a statement of the facts relating to your Lordship.

A few days before the late Trial against your Lordship and others, I was informed by Mr. Murray, that he

APPENDIX.—No. II

was to be examined as a witness on the approaching Trial. I asked him what was the nature of the evidence he had to give? He replied, that De Berenger had some time ago told him that he, De Berenger, and Mr. Cochrane Johnstone, had a plan in contemplation, which would be the means of putting a large sum of money into each of their pockets: that he joked De Berenger, and asked him to let him into the secret of the plan: that De Berenger laughed, and refused to tell him what the plan was, saying it was too good a thing to be made known.

Mr. Murray added, that this conversation with De Berenger took place a short time previous to the Hoax on the Stock Exchange; and that it was imagined, from a combination of circumstances, that De Berenger must have had the Hoax in view when he spoke of the plan between Mr. Cochrane Johnstone and himself.

I asked Mr. Murray if your Lordship's name was mentioned by De Berenger? He replied, "Oh, no; nothing was said about Lord Cochrane."

I observed that I was glad of this, as I conceived De Berenger would certainly have mentioned your name as well as Mr. Cochrane Johnstone's, had your Lordship been in the plot.

Mr. Murray rejoined, "Yes, I think it very probable."

The morning after, Mr. Murray, in accidentally recapitulating the conversation between De Berenger and himself, remarked, that upon recollection he thought your Lordship's name was mentioned by De Berenger; and presently afterwards he observed, that on reconsideration, your Lordship's name certainly was mentioned. I naturally felt surprised at this statement, it being so contradictory to that of the preceding day, and took the liberty of observing to Mr. Murray, that I conceived he would act wrong, however correct his intentions might really be, to give any evidence respecting your Lordship, after so strangely forgetting himself as to the only part of the conversation which could affect your case.

Other conversation passed, but I am not so positive and clear in my recollection of it, as of that which I have detailed to your Lordship.

I have the honour to be,

Your Lordship's

very humble servant,

RICHARD GURNEY, Jun.

APPENDIX.—No. III.

No. III.

LETTER from *Lieut. PRESCOTT to Lord COCHRANE.*

My Lord; . *King's Bench, Nov. '28, 1814.*

Having been requested by your Lordship to commit to writing the information which I communicated to you some months ago, I have no hesitation in complying with your request.

The substance of the account which I received from the persons whose names I mentioned to you, and who may be called upon if required, is, that they were of the party at a dinner, which was termed, "The Stock-Exchange dinner," provided by order of Mr. Harrison, at Davey's Coffee-house in the Bench, on the day before the *Trial*; at which dinner the Honourable Alexander Murray was also of the party, which consisted of seven or eight persons: that after they had dined, and the bottle had gone briskly round, Harrison said to Mr. Murray (who was then, and still is, a prisoner for debt), that he would get his affairs settled; and as he should receive a large sum from the Exchange for the conviction of Lord Cochrane, if he (Murray) wanted 50*l.* he should have it to-morrow; proposing at the same time, "Success to the Stock Exchange," which was drunk in claret with loud cheering: that this took place in the public coffee-room, before many persons both in the room and looking in at the windows, the dinner attracting considerable attention from its style, which was unusual in the Bench: that Mr. Harrison, in answer to a remark from one of the bye-standers, that the dinner would cost a round sum, said, it did not signify if it cost 50*l.* as the Stock Exchange would pay for it: that when the majority of the party had drunk as much wine as they could or were willing to drink, Mr. Harrison ordered several full bottles to be placed on the table; and the task of finishing the wine which remained devolving at length on the Honourable Alexander Murray, and he being unable to accomplish it by himself, he went into the lobby of the prison, and procured two of the turnkeys to assist him.

The further account of one of the persons above alluded to (who usually messed with Mr. Murray), is, that for some time previous to the *Trial*, Harrison was daily with Mr. Murray, dining and drinking with him; and

APPENDIX.—No. III.

that he was present when Harrison visited Mr. Murray, accompanied by the Solicitors, Messrs. H. and R.; on which occasion Harrison said to Mr. Murray, "Here are the gentlemen who will accomplish your wishes;" and one of those gentlemen replied, "Yes, Mr. Murray, after this Trial of Lord Cochrane has past, we will then attend to your liberation:"* that he heard Mr. Harrison declare in the lobby, as did many other persons, that he should receive a sum of money if he could procure evidence which would convict Lord Cochrane; intimating at the same time, that he was induced to offer his services to the Stock Exchange, in procuring evidence against him, by his personal antipathy to the whole family of the Cochranes, which he said would never subside while he breathed: that, subsequent to the Trial, he has repeatedly heard Mr. Murray express himself sorry for having appeared in Court against Lord Cochrane, and acknowledge that he had been the dupe of Harrison, in persuading him that his solicitors would undertake the arrangement of his affairs and effect his liberation, provided he would appear as an evidence against Lord Cochrane at the Trial.†

Shortly before the Trial, I addressed two letters to your Lordship on the subject of Harrison's visiting and tampering with Mr. Murray, who was expected to appear as an evidence against you; but your Lordship did not answer those letters, nor attend at that time to my communications. The fact, however, was notorious in the Bench. Of my own knowledge I have only to add, that on the day of the Stock Exchange dinner (as it was called), my attention was attracted by the noise of the entertainment, and the number of people collected; and I went into the coffee-room, and saw the party at the table, as did many other persons; and towards the close of the evening I saw Mr. Murray return from the lobby into the coffee-house, accompanied by one of the turnkeys. It was well known that Harrison was in a

* Messrs. H. and R. were Harrison's Solicitors on the Trial between him and the hon. B. Cochrane; and have since been employed by Mr. Murray, though they have not effected his liberation.

† It is due to the unfortunate Mr. Murray to observe, that his yielding to the arts which appear to have been practised upon him, to induce him to introduce my name into the Evidence he had to give at the Trial, is solely to be attributed to the imbecility of his mind, (naturally good) occasioned by a long-continued habit of excessive drinking.

APPENDIX.—No. IV.

state of extreme indigence previous to the Trial;* but shortly afterwards, I was present when he took a considerable number of bank-notes out of his pocket, and saw him place a £.50 note in the hands of a gentleman, to remain till an account with Mr. Lewis was investigated. I have also heard Harvison declare, in the presence of other persons, that he would ruin the whole Cochrane family.

I am, your Lordship's
most obedient servant,
THOMAS PRESCOTT.

No. IV.

CORRESPONDENCE with JOSHUA GRIGBY, Esq.

Mr. GRIGBY to Lord COCHRANE.

Drinkston, Woolpit, Suffolk,

My Lord;

Sept. 18, 1814.

Upon my return into Suffolk, I took an early opportunity of applying to Mr. Mills respecting the report I lately mentioned to you.

He said, that at Bury, on the second day of the assizes (August the 9th), when the Magistrates dined with the Judges, he heard Mr. Jones declare at the Judges lodgings, that "he had received a letter from Lord Cochrane, offering to pay him the amount of De Benger's debts, provided Mr. Jones would send to Lord Cochrane such a letter as Lord Cochrane might produce. Mr. Jones declined the offer, and wrote Lord Cochrane a letter, which he could not produce." I took this in writing, and shewed it to Mr. Mills, who said the statement was correct, and allowed me to quote him as my authority.

The effect of an assertion like this from Mr. Jones (who, I believe, attended Lord Ellenborough through the circuit), I leave your Lordship to conjecture. At Bury it answered every purpose your enemies could wish. But whether confined to Bury, or repeated at other places, I have not heard.

* He was imprisoned for defaming Mr. Cochrane, and afterwards detained for debt in the King's Bench, where his acquaintance with Mr. Murray is supposed to have commenced.

APPENDIX.—No. IV.

I understood, as did, I think, Mr. Brooks, that you had written no letter whatever to Mr. Jones on this subject.

I am, &c.

JOSHUA GRIGBY.

Lord COCHRANE to Mr. GRIGBY.—(Extract.)

Dear Sir;

King's Bench, Sept. 19, 1814.

I never wrote or caused to be written, nor in any way have I ever been privy to the writing or sending any letter to Mr. Jones, the marshal (or deputy marshal) of the King's Bench, or to any other person, relative to De Berenger's debts or concerns; neither have I in the course of my life written to, or received a letter from Mr. Jones, on any subject whatsoever.

(Signed) COCHRANE:

Lord COCHRANE to Mr. GRIGBY.

Dear Sir;

King's Bench, Sept. 20, 1814.

Being anxious to ascertain further respecting the report which you received from Mr. Mills, and at the same time to act openly towards the person from whom it is said to have proceeded, I sent by the hands of Mr. Broochooft (the marshal's secretary), your letter of the 18th to Mr. Jones, the marshal, who has returned it inclosed in a letter to Mr. Broochooft, of which I send you a copy, together with the copy of a letter which Mr. Jones says he received from Mr. Cochrane Johnstone, and of his answer thereto.

By these letters you will find that Mr. Jones's account is very different from that which you received from Mr. Mills.

It is hardly necessary to add, that I never was privy to the writing of any letter from Mr. Cochrane Johnstone to Mr. Jones.—The "Mr. Cochrane," mentioned as one of De Berenger's securities, is, I understand, a bookseller in Fleet-street, and is neither related to my family nor personally known to me.

I am, &c.

Joshua Grigby, Esq.

COCHRANE.

Mr. JONES to Mr. BROOCHOOFT.

Sir;

The statement made in the inclosed letter from Mr. Grigby to Lord Cochrane, which you delivered to me yesterday, with respect to the conversation I had with Mr. Mills at Bury, is certainly very incorrect, as I

APPENDIX.—No. IV.

never stated, nor ever meant it to be understood, that *Lord Cochrane* had ever written to me at all upon the subject.

What I stated was, that I had received a letter from *Mr. Cochrane Johnstone*, desiring me to make a statement with a view to its being laid before the public; and that I had sent him an answer, which I concluded he did not approve of, as he did not think proper to publish it.

In order to confirm this statement, and to prevent further misrepresentation upon the subject, I inclose a copy of *Mr. Cochrane Johnstone's* letter to me, and of my answer to it, which I wish you to deliver (together with this letter) to *Lord Cochrane*; by which his Lordship will see that *Mr. Mills* must either have misunderstood me, or that his memory has failed him with respect to what I actually did say; as I cannot suppose that any gentleman would wilfully make any misrepresentation upon such a subject.

I am, Sir,

your obedient servant,

To *Mr. Broochooft*.

WM. JONES.

Sept. 20, 1814.

Copy LETTER from *Mr. COCHRANE JOHNSTONE* to
WILLIAM JONES, Esq.

18 Great Cumberland Street,

Sir;

April 5, 1814.

It being reported in the city, that *Lord Cochrane* and I have paid the amount of *Baron De Berenger's* debts, for which he was in your custody; and being aware that this report is of a similar nature to others reported against us, you will oblige me by stating the facts of the case, in order that I may lay them before the public. I have the honour to be,

Sir, your obedient servant,

A. COCHRANE JOHNSTONE.

To the Marshal of the King's Bench.

Copy of *Mr. JONES's Answer*.

Sir;

I have been honoured with your letter about *Baron De Berenger*, and in answer I beg leave to inform you, that bills have been filed against me as Marshal of the King's Bench, for the recovery of the debts with which he was charged in my custody; but that I have not yet received

APPENDIX.—No. IV.

any thing from any person whatever towards the payment of those debts, though I am in hopes that I shall be able to recover the amount from Mr. Cochrane and Mr. Tahourdin, who are his sureties to me for granting him the liberty of the Rules.

I have the honour to be,

Sir, your most obedient servant,

To A. Cochrane Johnstone, Esq.

WM. JONES.

April 6, 1814.

Mr. GRIGBY to Lord COCHRANE.

My Lord;

Drinkston, 27th Sept. 1814.

As I was going into Bury yesterday, I met Mr. Mills on horseback, who could not stop to read Mr. Jones's letters; but when I told him Mr. Jones denied having said he had received any letter from you, Mr. Mills said, "then you must call Mr. C. and myself to 'prove it.'" As Mr. Mills was not to return till the afternoon, I left Mr. Jones's letters at his house.

I am, &c.

JOSHUA GRIGBY.

Mr. GRIGBY to Lord COCHRANE.

My Lord;

Drinkston, 29th Sept. 1814.

Mr. Mills retains his opinion of the conversation of Mr. Jones at the assizes; but complains that Mr. C. will not speak out.

It does appear to him, as to me, very extraordinary that Mr. Jones, intending to give a reason for believing you guilty, should allude to such a letter as that of Mr. Cochrane Johnstone.* I am, &c.

JOSHUA GRIGBY.

* With whom the report originated is, as far as I am concerned, of very little importance; but it is I think of great importance to prove that misrepresentations have arisen prejudicial to my character, from an improper combination and confusion of names. If the Report in question could have originated either in the misunderstanding, or otherwise, of any person of such respectability as either Mr. Jones or Mr. Mills, (who is a magistrate in the county of Suffolk), why, in the same manner, may not other reports, equally unfounded, have originated with Mr. Murray, (see *Trial*, p. 215), or Mr. Le Marchant, (p. 206), or De Berenger, (see his Letters), or even Lord Ellenborough himself? (see pp. 483, 500, &c. &c.)

APPENDIX.—No. V. & VI.

No. V.

ACCOUNT furnished by Mr. SMALLBONE, in proof of a bonâ fide Loan from Mr. BUTT to Lord COCHRANE.

Bought.	Lord COCHRANE'S Omnium Account.	Sold.
Feb. 15. 4,000 <i>l.</i> at 27½. 3,505 <i>l.</i>	Paid in the following order to me:	
	Feb. 15. Mr. Fearn's £. s. d.	
	draft 2,000 0 0	
	Mr. Lance, do. 450 0 0	
Paid by my draft on Jones and Co.	Cash received of Lord Cochrane	43 10 0
	Do. of Mr. Butt.....	200 0 0
	The Balance paid by self.....	811 10 0
		<u>£3,505 0 0</u>

Paid from the produce of the India Bonds and Omnium :		£. s. d.	Feb. 17. Sold to pay the above sums:
Mr. Fearn a draft	2,000	0 0	2,000 <i>l.</i> India Bonds ... 2,043 14 4
Mr. Lance...do.....	450	0 0	2,000 <i>l.</i> Omnium at 25½ 1,715 0 0
Loss on 1,000 <i>l.</i> Omnium	20	0 0	
Commis. on 5,000 <i>l.</i> do.	6	5 0	<u>£3,758 14 4</u>
Self.....	811	10 0	
Balance draft paid Lord Cochrane	470	19 4	Feb. 22. 2,000 <i>l.</i> Omnium*, sold at 28½, £1,770 0 0
	<u>£3,758 14 4</u>		Paid in Notes to Lord Cochrane.

* This is the 2,000*l.* Omnium for money, which I believed, when I drew the Affidavit, had been sold on the 21st of February; but which appears by this account not to have been done till the day afterwards.

No. VI.

MEMORANDUM of Mr. Butt respecting the Order and Payment for Wine, furnished by Messrs. Wilkinson and Co. to Lord Cochrane; which Memorandum was inclosed in a letter to them, requesting them to furnish a statement of the transaction. Also a LETTER from Mr. Hullock, on the part of Messrs. Wilkinson and Co., in answer to Mr. Butt, with Bills of Particulars annexed:—in proof of a payment of a bonâ fide Debt of Lord Cochrane's by the hands of Mr. Butt.

The following are the particulars relative to Lord Cochrane's Wine Account with Messrs. Wilkinson and Crosthwaite, of Fenchurch-street;—

APPENDIX—No. VI.

Sometime previous to the 19th February, I called at the counting-house, and desired them to send to Lord Cochrane, No. 11, Park-street, Grosvenor-square, some wine for his Lordship's private consumption, in consequence of their recommendation of the good quality of the same.

On Saturday, the 19th February, when I went to pay my own bill, I was accompanied by Lord Cochrane, for his Lordship to taste the wine for his sea stock, he having approved of the wine sent to his house as above stated. That after going through the cellar for nearly two hours, Lord Cochrane made choice of the wines which he approved of; and directed them without loss of time to be sent on board the Tonnant, then lying at Longreach.

Three or four days after this, to the best of my recollection, I called at the counting-house to ask whether the wine was sent, as it was my intention to settle the bill as soon as I heard that the wine was delivered on board; and desired them at the same time to make out the bill and send it to me, which they did; and on the 6th of March I called at the counting-house, and discharged it; but I have not the least remembrance in what notes I paid it, but it was paid out of money which his Lordship had deposited with me some time about the 22d or 23d of February, amounting to 1,200*l.* expressly left with me by his Lordship to discharge the wine account, and any other bills that he might direct.

Some few days after Lord Cochrane's return from the Tonnant in the month of March, I paid into Lord Cochrane's own hands the balance of his account in notes and cash; but what the numbers were I have not the least knowledge of, never having kept the number of a note in my life, or employed a banker; neither did I ever keep a cash account, having trusted entirely to my memory.

King's Bench, 4th July, 1814.

R. G. BUTT.

Sir

Fenchurch Street, 4th July, 1814.

In answer of your letter of this date, addressed to Messrs. Wilkinson and Co. I have to give the following statement of what occurred, to my own knowledge, relative to the transaction you allude to:—

I well recollect that, a few days previous to the 29th day of January last, you ordered of my employers Messrs. Wilkinson and Crosthwaite, for Lord Cochrane, a quantity of wine, amounting to 24*l.* (a copy of the bill of particulars of which is inclosed) to be delivered at his Lordship's

APPENDIX.—No. VI.

house in Park-street, Grosvenor-square, and which I believe was delivered there accordingly, on the 29th.

On or about the 19th of February last,* Lord Cochrane and yourself called at the counting-house in Fenchurch-street, and you paid us your own bill of 24*l.* 0*s.* 6*d.* as appears by an entry in my writing in our books. Afterwards I took an order from Lord Cochrane himself for wines, amounting to 675*l.* 9*s.* (after allowing a discount of 35*l.* 11*s.*) as set forth in the copy of the bill of particulars enclosed, which his Lordship desired might be sent on board his Majesty's ship *Tonnant*, without loss of time. I believe his Lordship and yourself were engaged in our cellars upwards of two hours in tasting wines, before his Lordship gave me the order.

A few days after the last wine was so ordered, you called at the counting-house again to ask if it was sent, as it was your wish to settle the bill as soon as you heard the wine was received on board, and desired the bill to be sent to you.

The wine was accordingly shipped about the 26th of February last, and on the 2d of March following, I sent the bill of parcels, directed to Lord Cochrane, on board the *Tonnant*, at Chatham.

About the same day I left another copy of the bill for yourself at Mr. Fearn's counting-house, in Shorter's-court, Throgmorton-street.

On the 8th of March you called at our counting-house, and paid the two bills, amounting together to 699*l.* 9*s.* in the following Bank-notes, viz.

A Bank-note, No. 3095, dated Feb. 16th 1814, for		} £.100 0 0		
Another, No. 3040, 16th - -	for -			
Another, No. 4540, 4th - -	for -	500	0	0
		<hr/>		
		£.700 0 0		
Gave Change	- - - -	0 11 0		
		<hr/>		
		£.699 9 0		

which notes, on the same day, I paid into Messrs. Lees and Co. the Bankers, as appears by their books.

I am, Sir,

Your obedient humble servant,
JAMES HULLOCK.

To R. G. Butt, Esq.

* It is important to shew that it was on that particular day. Mr. Hullock says, "on or about;" but he adds, that Mr. Butt paid his own bill at that time; and fortunately, Mr. Butt has preserved the receipt, which bears date February the 19th.

APPENDIX.—No. VI.

Right Hon. Lord Cochrane

To Wilkinson and Crosthwaite.

1814				£.	s.	d.
Jan. 29.	3 doz.	Old Red Port - 63s.	- - -	9	9	0
	2 doz.	Sherry - - - 63s.	- - -	6	6	0
	1 doz.	Calcavelha - - -	- - -	3	3	0
	1 doz.	Lisbon - - -	- - -	3	3	0
	7 doz.	Bottles - - - 5s.	- - -	1	15	0
		Cart and Porters - - -	- - -	0	4	0
				£.24	0	0

London, 24th February, 1814.

Right Hon. Lord Cochrane

To Wilkinson and Crosthwaite.

For the undermentioned Wines, shipped in the Tonnant;
viz.

				£.	s.	d.
54 doz.	Old Red Port - at - -	63s.	- 170	2	0	0
60 -	Vidonia - - - - -	63s.	- 189	0	0	0
10 -	Claret - - - - -	6l.	- 60	0	0	0
124 -	Bottles - - - - -	5s.	- 31	0	0	0
2 Pipes	fine Madeira, 218 gallons -	27s.	- 294	6	0	0
4 Hhds	Red Port, 240 gallons -	20s.	- 240	0	0	0
19 Half Chests	and 1 Case - - - - -		- 20	0	0	0
	Entry, Certificate, and Wharfingers - -		- 1	17	6	
	Customs & Excise, Bonds, Debentures, &c.		- 4	14	6	
				£.1,009	0	0
By drawbacks at Customs and Excise				298	0	0
				£. 711	0	0

Discount allowed 5 per cent.—£. 35 11

Cash - - - - 675 9

£.711 0

The Right Hon. Lord Cochrane,

His Majesty's Ship Tonnant.

No. 1.—1 Case, 10 doz. Claret

2a 3.—2 Pipes 218 gallons Madeira

4a 12.—9 Half Chests, ea. 6 doz. is 54 doz. Red Port

13a 16.—4 Hogsheads 65, 59, 58, 58 is 24 gals. Red Port

17a 26.—10 Half Chests, ea. 6 doz. is 60 doz. Vidonia.

APPENDIX.—No. VII.

No. VII.

To the ELECTORS of WESTMINSTER.

King's Bench, August 10, 1814.

Gentlemen;

It is fresh in your recollection that when Lord Ebrington, contrary to my opinion, which was conveyed by letter to his Lordship, and at my request read by him to the House, made his motion for a remission of that part of the Sentence which was to have been executed this day, Lord Castlereagh was empowered to state that the Prince Regent had already done that which it was the object of Lord Ebrington's motion to effect. You will also remember that Lord Castlereagh, instead of immediately making his communication, and preventing an unnecessary, and consequently improper discussion, withheld it from the House for a considerable time; and thus afforded the Attorney and Solicitor-General and himself an opportunity of making a new and violent assault upon my character and conduct. Although many of their arguments had been previously refuted, and others were well answered at the time, yet it was impossible for those honourable Members who entertained a favourable opinion of me, to answer every accusation which the Solicitor-General and others brought forward by surprise. It remains, therefore, for me to offer some observations in my own defence, in which my reason will appear for having suffered some delay to occur in the execution of this important duty.

In the course of the Solicitor-General's speech, he asserted that, in my Defence, I had mis-stated the circumstances of the transaction, and had charged my Solicitors with a gross dereliction of duty. I shall show that I have neither mis-stated circumstances, nor made any unfounded accusation. He further asserted, that he would take upon himself to say, that the Brief had been drawn up from my own instructions. The fact is, I have never denied that I gave instructions for the Brief. It is true, however, that I gave no specific instructions to Counsel, and attended no consultation; but it is obvious, that without some instructions or some information from me to my Solicitors, there could have been no Brief at all. My Solicitors themselves applied to me for written information, and I, of course, furnished them with such par-

APPENDIX.—No. VII.

particulars as occurred to me on the subject, which are written on one sheet of paper, and might have been written on one page. This paper is endorsed by my Solicitors, "Lord Cochrane's Minutes of Case," and may be seen in my possession.*

I apprehend that it was the duty of my Solicitors to have sent me a copy of the Brief, which, however, they did not; and I repeat that, previous to the Trial, I never read it. It appears that they particularly called my attention to an unimportant circumstance which they had inserted in the Brief, or the examinations attached, in consequence of an erroneous communication from my servant, who had confounded the circumstances of two different occurrences.† This was the "one particular" which the Solicitor-General says that I myself corrected. I admit that this error was expunged by my authority, and opposite the four lines which contained it, is written, "Read this to Lord Cochrane," which I think is an argument that the greater part of the Brief was not read to me; particularly as there are twelve lines expunged in another place, opposite to which my name does not appear. My Solicitors, however, assert, that though I did not read the Brief myself, they read the greater part of it to me; and on their assertion I will admit that they did so, though I have no recollection of the fact. But if it could be shown that they drew my attention to every line of the Brief, except only to that one most important point, the description of De Berenger's dress, which immediately follows the four lines expunged, I still think that they were guilty of very reprehensible negligence. In my Affidavit which was before them, and was introduced into the Brief, the coat worn by De Berenger is sworn to have been *green*; and in the examinations at-

* It was discovered by his Majesty's law officers, that these few hints, or "Minutes of Case," given to my Solicitors, at their own solicitation, preparatory to drawing the Brief, furnish a contradiction to my assertion in the House, that *I gave no instructions to COUNSEL*. I was desirous of giving these learned gentlemen the full benefit of the discovery, by making them public, when I published this Address to the Electors of Westminster; but was prevented by a suggestion that the Address, with the other important documents annexed, were already too long for a communication to the newspapers; and so the editor of one of those prints appears to have thought, for he omitted two very important and inoffensive paragraphs. As the same reason no longer exists, I insert the "Minutes of Case," between the Address and the Questions to the Solicitors.

† See this explained, in the Answer to an anonymous Letter, at the end.

APPENDIX.—No. VII.

tached to the Brief it is stated to have been *red*. It is impossible that this most important difference could have escaped their observation, and yet it is true that they never called my attention to it. I may affirm, without fear of being again contradicted, that I did not know that the dress of De Berenger, which I had sworn to be green, was in any part of the Brief, much less in the examinations of my servants, described to be red; because it is impossible, unless I had been absolutely insane, that I should not only have been satisfied with a Brief which authorized my Counsel to contradict my own Affidavit, but have been anxious to send my servants into Court to give evidence against me.

If my Solicitors actually read this part of the Brief to me, it is obvious that I was not giving that attention, which a man conscious of guilt naturally would have given. The word "*RED*," if I had heard it, must have instantly excited my particular notice. But, "if the difference between red and green escaped my observation," what did my Solicitors "think"* of it? My accusers chiefly depended for my conviction on proving that De Berenger appeared before me in the red coat in which he committed the Fraud. Is it possible that one of my Solicitors should have read it to me, and not have said, 'You observe, Lord Cochrane, that this is contradictory to your Affidavit?' To have read it to me without a pause, and have suffered it to pass without observation, is, I think, as negligent as not to have read it at all; and is wholly irreconcilable with the assertion of Mr. Abercrombie, that both parts of the Brief were read over to me with the utmost care.

If, in my defence in the House of Commons, I did not state the manner in which I apprehend the difference between the Brief and the Affidavit originated, it was because I could not have stated it without throwing more blame on my Solicitors than I felt inclined to do. I have been challenged by the Attorney General to unseal the lips of my Solicitors and Counsel. My Solicitors, however, did not wait for me to unseal their lips, as is evident by what is called the Counter-statement, with which they thought proper to furnish Mr. Abercrombie and others; and I think it rather unreasonable to require me to unseal the

* In more than one account of Lord Ellenborough's Charge, his Lordship was represented to have said, "If the difference between red and green escaped Lord Cochrane's observation, what did he think of the Star and Medallion?"

APPENDIX.—No. VII.

lips of my Counsel to qualify them to give evidence against me, when I could not succeed in unsealing their lips on the Trial to speak one word in my behalf. My own Counsel, Mr. Topping and Mr. Scarlett, whom I fully expected would have advocated my cause, never spoke in my defence. In saying this, however, I cast no blame on those gentlemen, because I have no doubt that, under the circumstances then known to them, they acted as they thought best. Neither do I mean to blame Mr. Serjeant Best (the Counsel for Mr. Johnstone), who, contrary to my expectation and direction, defended my cause in conjunction with that of his own client. He made as able a speech as any advocate could have done, with the information he possessed, and under his then circumstances; but he intimated at the time, and afterwards authorized me to assert, that he was not able to do justice to the cause; and it is a just ground of complaint, that after Mr. Serjeant Best had been exhausted by fifteen hours close attention and confinement, he was not allowed a few hours to recover himself and prepare for the Defence.

To return: I do, however, accept the daring of the Attorney General, and freely release my Solicitors and Counsel from every obligation of secrecy.* I might perhaps have done this sooner, but the delay has not been occasioned by any doubt in my mind as to the propriety of the step, or fear of the consequences. I thought, however, after the statement which has been circulated by my Solicitors, that it was my duty, in the first place, to put to them certain questions, which I was not aware would have occasioned much delay; but after a lapse of nearly a fortnight, they wrote to inform me, that they thought it would be improper to answer those questions. I now lay them before the public.

I particularly authorise the Counsel employed for the Defence, to state their reasons for determining to defend me conjointly with Mr. Johnstone, contrary to the opinion of Mr. Adam expressed on the 6th of May, contrary to their own opinion expressed on the 24th of May, and contrary to my opinion and direction expressed on the 29th of May; and I also particularly authorise them to assign the reason for their opinion, that no witnesses ought to be examined on my part;† and especially their reasons for not

* I have not learnt that any of these gentlemen have made any disclosures in consequence of this release.

† From an item in my Solicitor's bill, dated June 6th, only two

APPENDIX.—No. VII.

examining my servants on the subject of De Berenger's dress, notwithstanding my earnest desire to have them examined. I am also willing, nay, I am anxious, that Mr. Serjeant Best should state, whether, when he admitted that the coat was red, and not green, he did not imagine that I had sworn falsely by design? I know that in his speech he attributed my description of the coat to error only, but I am anxious to know whether he did so from his feelings as a man, or his sense of duty as an advocate? Until I am better informed, I shall incline to the opinion that he was actuated by the latter feeling only; because, if he really imagined that he had to defend an innocent man, I do think that he would not, without previously communicating with me on the subject, have had recourse to the dangerous expedient of admitting that to be *red* which I had sworn to be *green*, however embarrassed he might have been by the confusion of his Brief, or exhausted by the fatigue and long confinement which he had undergone.

I stated in the House of Commons that I gave no instructions to Counsel, and attended no consultation. I now see the folly of this negligence; for if I had personally attended to my interests, and conferred with my advocates on the subject, I have no doubt that I should have fully convinced them of my innocence. I believe that, subsequent to the Trial, there is not a single individual with whom I have conferred on the subject, who has not left me with that impression.

To come now to the manner in which the error in the Brief originated, I have no hesitation in acknowledging that I am at issue with my Solicitors on that point. Their account is, that two of my servants, whom I had sent to their office to be examined as to the evidence they could give on the Trial, admitted that De Berenger wore a *red* coat with a green collar. My servants, on the contrary, assure me that they did not, and could not ad-

days before the Trial, I extract the following: "Attending a consultation at Mr. Serj. Best's chambers, when your Case was fully considered, and all the Counsel were decidedly of opinion that you must be defended jointly with the other Defendants; and the Counsel recommended your servants being in attendance on the Trial, although they still remained of opinion, that neither they nor any other witness ought to be examined on your part." In a subsequent item, dated June 7th, the day before the Trial, I am represented to have acquiesced; not, however, in the non-examination of my witnesses, but in the *joint-defence*. It appears, however, that I held out to the last; and if I did acquiesce, it was then high time to do so; otherwise, in all probability, I should not have been defended at all.

APPENDIX.—No. VII.

mit that it was a red coat; because, when they saw De Berenger, he wore a great-coat buttoned up, and they neither saw the body nor the skirts of the under coat; but the collar, and so much of the breast as they saw, were green: but they admit, that on being questioned by my Solicitors, whether they could swear that it was not a red coat, they confessed that they could not, and admitted that it might be red, and that the green which they saw might be green facings to a military coat: but they have constantly declared that no part which they saw was red, and they deny that they ever admitted that they saw any red.

My Solicitors were in possession of their previous Affidavits, describing De Berenger to have worn a grey, great-coat buttoned up, and a coat with a green collar underneath. I shall not deny that my Solicitors considered the admissions of the servants to amount to an acknowledgment that the coat was red; but I shall ever believe that such admissions actually went no further than that, since they did not see the body of the coat, it might, for aught they knew, be red—and possibly, that they supposed it was red, because the wearer having a sword and military cap, they conceived him to be an army officer.—The description which my Solicitors introduced into the Brief, in consequence of this examination, namely, a red coat with a green collar, neither accords with my description nor with the coat actually worn by De Berenger on his way from Dover, which, as proved by the witnesses on the Trial, was either wholly scarlet, or turned up with yellow.

If I had been a party to the Fraud, and had sworn falsely as to the colour of the coat, I doubtless might also have been wicked enough to have endeavoured to suborn the servants to perjure themselves in my behalf; but I should hardly have ventured to send them to my Solicitors to be examined on the subject, without previously instructing them myself: and it can hardly be supposed, that if they had been on their guard from any previous instructions of mine, that my Solicitors, in the common course of examination, would have obtained from them any evidence which militated against my own statement. I should naturally, too, have felt some anxiety to know the result of their examination; yet the truth is, that I never asked them a single question on their return from the Solicitor's office. Indeed, if I had questioned them as narrowly as one may suppose a guilty man, who had sent his servants on a guilty errand of so much danger

APPENDIX.—No. VII.

and importance, would have questioned them, I should in all probability have discovered whether they had or had not executed that errand to my satisfaction. At all events, I should have been anxious to know the result of their examination as entered in the Brief; and if it be true that it was actually read to me by my Solicitor, I must, under such circumstances, have lent too attentive an ear to have suffered the ruinous word *red* to have escaped my observation. I must, too, have shewn certain symptoms of uneasiness on hearing that word, which could not have escaped the observation of the reader, particularly as the contradiction between that word and my oath must have been present to his mind. And lastly, with the knowledge that the Brief contained a flat and fatal contradiction to my own Affidavit out of the mouths of my own servants, I should hardly have suffered it to have gone to my Counsel in that state; and then have pressed, in the way in which I did press, to have those servants examined at the Trial.

How my Solicitors could admit so fatal a contradiction into the Brief, without drawing my attention to it immediately by letter, it is for them to explain; yet they admit that they never wrote to me on the subject. They very quietly however inserted it, and let it remain in the Brief until I should happen to discover it; which, as I have pretty clearly proved, never did happen previous to the Trial. It was on the second day of the Trial, and not before, that, to my very great surprise, I discovered in a newspaper the admission of my Counsel in contradiction to my Affidavit. "Yet," says the Attorney General, "there was no mistake and no surprise: if there had, the Judges would have dispensed with their rule, and granted a new Trial: but no! there was nothing of that sort here."

In whatever way my Solicitors took the examination of my servants on the subject of De Berenger's dress, it is indisputable that nothing can justify their neglect in not immediately drawing my attention to the difference between the result of that examination and the statement in my own Affidavit.—"It never can be permitted," said the Solicitor General, "that a person accused should try in the first instance how far he could go without his own witnesses; and then, should the result prove unfavourable, how far he could go with them." How unjust this observation is, as applied to me, is well known to my Solicitors—they well know how anxious I was to have my witnesses brought forward in the first instance.

APPENDIX.—No. VII.

Those witnesses would and could conscientiously have sworn to the green collar, which would have sufficiently corroborated the description in my Affidavit, as it never was pretended that De Berenger wore a green collar to his scarlet coat.

It was asked by the Attorney General, "If the servants could have confirmed the Affidavit, where was the advocate who could have been stupid enough to hesitate to produce them?" It is possible, however, that advocates may be prejudiced, may be mistaken, and may be misled by their Brief.*

I hope that it will now appear to be satisfactorily proved, not only that I did not see De Berenger in his scarlet coat, but that he did not come to my door, nor even enter the hackney-coach in that dress.—(See the annexed Affidavits).

In reply to the Solicitor General's observation, that I had sought to establish my own innocence by recrimination upon the Judge and Jury, I shall at present merely ask the learned gentleman, whether he is of opinion that a like sentence for a like offence would have been passed on any nobleman or member of Parliament on his side of the House? Would a punishment which, according to the unfortunate admission of the Attorney General, is calculated "to bow down the head with humiliation ever after," together with fine and imprisonment, and the privation of every office and honour, have been thought little enough for a ministerial defendant on such a charge? And if the candour of the learned gentleman impels him to answer in the negative, is it not fair to inquire whether he thinks that such an one would even have been convicted on similar evidence? The Attorney General observed, "that he was glad that the period had arrived when the Trial could be read at length, and thus do away the effect of those imperfect statements which misled the public mind." Reserving my remarks on the Trial for a future opportunity, I shall at present just ask the Attorney General how it comes that he, who is so anxious that the public mind should not be misled, should have made the unfounded assertion, that I not only pocketed a large sum of money by the Fraud, but put off absolute ruin? Such an assertion is the more in excusable in the Attorney General, who had every faci

* It is also possible that they may be compelled to attempt the exercise of their duty, when incapacitated by faintness and fatigue.

APPENDIX.—No. VII.

lity of obtaining more correct information. His own broker could have told him that the Omnium, which I possessed on the 19th of February, when the Fraud must have been in agitation, could have been sold on that day at $27\frac{1}{2}$. The average-cost was $27\frac{1}{2}$; so that the whole loss on the 139,000*l.* Omnium, if sold on that day, would not have amounted to above 400*l.* And when it is considered that the result of my previous speculations was a gain of 4,200*l.* received, and 830*l.* in the hands of my broker, how does the Attorney General make it out that I had so embarrassed myself by such speculations, as to have no other than fraudulent means of escaping absolute ruin? Besides, I can assure the learned gentleman, if he is not already apprised of the fact, that if I had held the Omnium till the 1st, 3d, or 4th of March, I should have sold it at a profit; and if I had held it till the settling-day, when I must of necessity have sold it, I should not have lost half the sum I had previously gained. But if upon the whole I had lost a few hundreds, or even thousands, how would the Attorney General be justified in inferring my absolute ruin? It is well known that I had been more successful at sea than almost any other officer of my standing in the navy, and that I have constantly lived, not only within my income, but at less expense than almost any other person of my rank in society. On what grounds therefore is the Attorney General warranted in representing me as a person in such desperate circumstances as to be obliged to have recourse to the lowest knavery in order to avert absolute ruin?

With respect to the other assertion, that I pocketed a large sum of money in consequence of the transactions of the 21st of February, did not the learned lawyer know that the Stock Exchange Committee had seized not only 1,700*l.* of my money, which was my actual profit from that day's sale, but also a further sum of 770*l.* to answer their exaggerated calculation of that profit? and that the aforementioned sum of 830*l.* was also lost through the proceedings of that Committee? If the learned gentleman knew nothing of all this, I can only observe, that he ought to have informed himself on the subject before he made such statements in the House of Commons.

I have the honour to be,

Gentlemen, with great respect,

Your most obedient and faithful servant,

COCHRANE.

APPENDIX.—No. VII.

MINUTES furnished to Messrs. FARRER and Co. my Solicitors, at the Trial, at their own request, and endorsed by them, " Lord Cochrane's Minutes of Case."

Lord Cochrane was not in habits of intimacy with De Berenger.

De Berenger never broke bread in Lord Cochrane's house; and never, as far as Lord Cochrane knows, sat down in it.*

Lord Cochrane's servants never carried a note or letter to De Berenger, or put any note or letter into the post for him.

De Berenger's servants never brought any note or letter to Lord Cochrane, or forwarded any addressed to him.

The only person who came to No. 13, Green-street, on the 21st of February, in uniform, or the appearance of uniform, was De Berenger.

De Berenger wore a grey great-coat, without any trimming; and had a green coat, or a coat with a green collar, under it.†

De Berenger sent a note to Lord Cochrane, which was delivered to him at Mr. King's manufactory, where he was in the daily habit of going.

The Hon. Major Cochrane was dangerously ill, and confined to his bed, at that time in Spain.‡

Lord Cochrane was appointed to command the *Tonnant*, but had obtained leave of absence to draw up and lodge the Specification to a Patent.

His leave of absence was to expire on the § and he did write such specification, and lodged it on the||

The man who happened to open the door to De Berenger, had been hired for the express purpose of going into the country to relieve Lord Cochrane's sea-steward, and did so accordingly.

No man whatever lived in Lord Cochrane's house, except himself and one or two servants.

* Neither in Green-street, nor any former residence. See Answer to an Anonymous Letter, at the end of this publication.

† See the *second* of the series of questions which I addressed to my Solicitors, July 25th.

‡ At Cambo in France, on the borders of Spain.

§ 28th of February.

|| Ibid.

APPENDIX.—No. VII.

The servants, who were discharged, had received a regular month's warning, and left in consequence thereof.

On * , Lord Cochrane directed Messrs. Lance and Smallbone to purchase for him 5,000*l.* Omnium for money †; but on going to the office ‡ with the intention to pay for it, he found that he had neglected to bring the necessary sum; and having only about 50*l.* with him, he borrowed of Messrs. Fearn, Lance, and Smallbone, a sum equal to the deficiency, except 200*l.* which was lent to his Lordship by Mr. Butt.

Mr. Fearn was repaid on the following day § by the sale of the Omnium, Lord Cochrane having given orders to sell it, in the event of his not being able to come into the city, which was the case.

Messrs. Lance and Smallbone repaid themselves, and Lord Cochrane returned Mr. Butt the 200*l.* when he received the balance on Saturday the 19th.

King's Bench, July 25, 1814.

Gentlemen;

In consequence of what passed in the House of Commons on Tuesday last, I feel it my duty to call upon you, as my Solicitors on the late Trial, for answers to the following questions:—

Did I ever give you, in writing, any other instructions for the Brief, than a few observations contained in one sheet of paper, which was afterwards endorsed by you, “Minutes of Case?”

Was not the description of De Berenger's dress, as contained in those Minutes, namely, “a grey great-coat, without any trimming, and a green coat, or a coat with a green collar, under it,” understood by you to have reference to what could be proved only, and not to imply a doubt in my mind as to the colour of the under coat, but merely to intimate that the witnesses might only be able to speak to the colour of the collar, on account of the body of the coat having been concealed by the great-coat?

Did not I, at your request, send my servants, Thomas Dewman and Mary Turpin, to your office to be examined by you preparatory to your drawing the Brief? And were

* 14th of February.

† On the 15th.

‡ Which they did on the 15th.

§ On the 17th.

APPENDIX.—No. VII.

not you previously in possession of my Affidavit, in which the coat worn by De Berenger in my presence, on the 21st of February, is sworn to have been green? And were not you aware that my said servants had also made Affidavits that the officer they saw at my house on that day wore a grey great-coat, buttoned up, with a green collar underneath?

Did you not particularly question them as to the colour of the under-coat? Did you not expressly ask them whether it was a red coat? And whether they could swear that it was not a red coat? which they could not, because it was worn under a great-coat, which was buttoned up.

Was it not in consequence of repeated questions that they were induced to admit that the under-coat might be red? Did either of my servants admit that any part which he or she saw of the under-coat was red?

Did you not, in consequence of the examination of my servants, insert in the Brief that the under-coat worn by De Berenger was a red coat with a green collar?

Did you ever call my attention to *that* part of the Brief, by word or letter? And do you really believe that I was privy and consenting to the fact of my Counsel being authorized by the Brief to admit that coat to be red, which I uniformly declared to you was green, and which I had sworn to be green?

Did you read the whole of the Brief to me, or merely detached parts? Did I peruse it myself in your presence, or to your knowledge? Did you ever, previous to the Trial, furnish me with a copy of it?

Did I ever make any alterations in the Depositions of the servants, or in any part of the Brief, relative to what they could depose on the important subject of De Berenger's dress? Did I ever desire you to re-examine them on that point?

Did I ever, as far as you know and believe, give instructions to my Counsel? Did I ever attend any consultation? Was not my Defence mixed with Mr. Johnstone's contrary to my orders? and did you inform me that Mr. Johnstone's Counsel, and not my own, was to plead my cause?

Was I not, as far as you know and believe, absent from London for near three weeks, previous to and up to the Monday preceding the Trial?

Did you ever call the attention of the Counsel, by word or letter, to the difference between the statement in the Brief and the Affidavits of myself and servants, re-

APPENDIX.—No. VII.

specting the dress of De Berenger? When did the Counsel, to the best of your belief, discover that difference?

Did I not send my servants to Guildhall on the 8th of June, the first day of the Trial, to be examined? Did I not send you a note by them, to inform you that I had sent them for that purpose? Did I not send them again on the second day of the Trial? and did I not write to you on that day, particularly requesting that they might be examined? When did you receive my second letter? Was it not prior to the close of my Defence? and if subsequent, was it not at least several hours prior to the close of De Berenger's Defence? Had the Counsel, to your knowledge, resolved at all events not to examine my servants? Did you communicate to me such their determination? Have you any reason to believe that I had the least knowledge, prior to the Trial being closed, that my servants would not be, or had not been examined?

If I had been informed that the Counsel had refused to examine them, might I not have gone into Court, and personally demanded the examination of my witnesses?

I am, &c.

Messrs. Farrer and Co.

COCHRANE.

Lincoln's Inn-fields, August 3, 1814.

My Lord;

We were duly honoured with your Lordship's letter of the 25th ult. requiring our answers to many questions relating to the late Prosecution; but after what has passed, and the communications we have already made, we hope your Lordship will agree with us in thinking, that it would be highly improper in us now to answer any more abstract or partial questions. We have, agreeable to your uncle's desire, made out, and now beg leave to inclose you our bill in that business, in which you will find most of the facts to which your questions relate, stated as they occurred.

We are, &c.

FARRER and Co.

The following AFFIDAVITS are the voluntary and disinterested Acts of the respective Deponents:

London, } JAMES MILLER, of Marsh-gate, Westminster-bridge-road, in the county of Surrey,
(to wit.) } butcher, maketh oath and saith, That on the 21st day of February last, between eight and nine o'clock

APPENDIX.—No. VII.

in the morning, as he was standing at his door in the said Westminster-bridge-road, he saw a Dartford chaise-and-four stop at the coach-stand opposite to his house, when several persons assembled and inquired of the post-boys, whom they had brought in the chaise? They answered, "A messenger from France, and the bearer of dispatches that Buonaparté was killed, and cut to pieces by the Cossacks." That deponent saw the supposed messenger, dressed in green with a grey great-coat, get out of the said chaise into a hackney-coach; and deponent positively declares he saw no red upon any part of his dress. That deponent asked the waterman who attends the coach-stand, where the gentleman was going to? and he replied, "the coachman is ordered to drive over the bridge." And this deponent further saith, that about seven o'clock in the morning of the said 21st of February, as he was going to market, one of the collectors of the tolls at the said Marsh-gate told him that a chaise-and-four, with a messenger, went through the said gate towards town, between six and seven o'clock that morning.

(Signed) JAMES MILLER.

*Sworn at the Mansion-house, London,
the 22d day of July, 1814.*

(Signed) WM. DOMVILLE, Mayor.

London, } JOSEPH RAYMENT, of the Westminster-
(*to wit*). } bridge-road, in the county of Surrey, fish-
monger, on his oath saith, That to the best of his recollection, on the morning of the 21st of February, about nine o'clock, he saw a post-chaise-and-four pass his house, which is near to the Marsh-turnpike-gate, and was informed that it brought intelligence that the French army was cut in pieces and Buonaparté killed; on which he went out to learn the fact; when he saw the said post-chaise draw up along-side of a hackney-coach, and a person got out of the chaise into the hackney-coach; that on getting out, his great coat, partly open, enabled deponent to see the coat underneath, and it appeared to him to be dark-green: deponent fancied he was a foreign officer, as the dress was like that of the sharp-shooters. When deponent returned to his house, he mentioned to his wife the intelligence, and described to her the dress in which the person appeared, which fact she is ready to testify.

(Signed) JOSEPH RAYMENT.

*Sworn at the Mansion-house, London,
this 22d of July, 1814.*

(Signed) WM. DOMVILLE, Mayor.

APPENDIX.—No. VII.

London, } CHARLES KING, of Westminster-bridge-
(to wit.) } road, in the county of Surrey, stable-keeper,
 maketh oath and saith, That some time
 previously to the Trial of C. Random De Berenger,
 and others, he saw William Crane, the hackney-coach-
 man, and one of the witnesses on the said Trial on behalf
 of the Prosecution, passing by deponent's stable-yard, in
 Westminster-road, in company with Sayer, the Bow-
 street officer, on his way to identify the said Charles
 Random de Berenger, who was then in custody. A day
 or two afterwards deponent met the said William Crane
 accidentally in the said Westminster-road, and asked
 him, what he had been doing with Sayer? He answered,
 "He had been to see De Berenger, in order to identify
 him, but he could not swear to him, as many faces
 were alike;" but he said, using a protestation in the
 most horrible language too beastly to repeat, "he would
 have a hackney-coach and horses out of *them*," mean-
 ing, as the deponent believes, the prosecutors. During
 this conversation, a person passed by them dressed in a
 grey great-coat, when the said William Crane, pointing
 to him, said he (meaning De Berenger) was drest just like
 that gentleman, only he had a cap on; and he (the said
 William Crane) did not see his under-dress, as his coat
 was closely buttoned up. And deponent further saith,
 that after the said Trial he saw the father of the said
 William Crane, who told him he was going to look after
 the money (meaning the reward), as his son was consid-
 ered a first-rate witness; when deponent asked him, how
 he could consider his son in that light, as he knew suffi-
 ciently well that, had he (deponent) appeared, he must
 have beat him out of Court? The father replied, if he had
 beat him—"there was the place where the clothes were
 bought, and the post-boy." That on deponent being
 severe in his remarks, the father said, "I do not know
 what they did with the boy; they had him two days
 locked up in the Police officer's house, that he might
 not be tampered with by the other side."—Deponent
 asked him if there had been any advances by the op-
 posite party? He said, "None." And this deponent fur-
 ther saith, that he has seen the said William Crane since
 the said Trial, who, on deponent accusing him of having
 gone too far in his evidence, he said, using the same
 unnatural protestations, "that he would swear black was
 white, or any thing else, if he was paid for it." And
 deponent further saith, that previously to the said Trial,

APPENDIX.—No. VII.

the said William Crane's coach and horses were of a most miserable description; but that, since the Trial, he has purchased a hackney-coach and horses of the best description. And deponent further saith, that the said William Crane's general character is most infamous, and his mode of expressing himself so obscene and blasphemous, as to preclude deponent from stating the exact words made use of by the said William Crane. And this deponent lastly saith, that the man-servant of Mr. Keir, of Bridge-street, Westminster, and the groom of colonel Taylor of the Custom-house, were present on or about the 2d day of July, when Crane declared, "that he would swear black was white, or any thing else, if he was well paid for it."

(Signed) CHARLES KING.

Sworn at the Mansion-house, London,

this 22d day of July, 1814,

(Signed) WM. DOMVILLE, Mayor.

London, (to wit.) } RICHARD BALDWIN, of No. 7, Bridge-street, Westminster, in the county of Middlesex, servant to Mr. George Keir, of Bridge-street aforesaid, on his oath saith, That on or about the 2d of July, he was present at a conversation which took place between Charles King and William Crane, one of the witnesses on the Trial of Charles Random De Berenger, and others, on behalf of the Prosecution, when he heard the said William Crane (in reply to the said Charles King, who had accused him of having gone too far in his evidence) say, that "he would be damned if he would not swear black was white, or any thing else, if any one would pay him for it."

(Signed) RICHARD BALDWIN.

Sworn at the Mansion-house, London,

this 22d day of July, 1814.

(Signed) WM. DOMVILLE, Mayor.

London, (to wit.) } THOMAS CRITCHFIELD, of Westminster-bridge-road, in the county of Surrey, coach-maker, on his oath saith, That he knows William Crane, one of the witnesses for the Prosecution on the Trial of Charles Random De Berenger, and others; and that he heard him say, previously to the said Trial, when speaking of his father, that "he did not care a damn for his father, that he was 21 years of age, and he should soon have more money than ever his father

APPENDIX.—No. VII.

“ had.” And deponent also saith, that, since the said Trial, the said William Crane has been enabled to purchase a very good hackney-coach, with horses and harness, though, previously to the said Trial, his coach and horses were of a most miserable description. And deponent lastly saith, that the said William Crane is a man of the most infamous character, and this deponent positively declares that he would not believe him on his oath.

(Signed) THOMAS CRITCHFIELD.

*Sworn at the Mansion-house, London,
this 22d day of July, 1814.*

(Signed) WM. DOMVILLE, Mayor.

London, (to wit.) } JAMES YEOWELL, of Silver-street, Falcon-square, in the City of London, ticket-porter, maketh oath and saith, That, a few days after the 21st of February last, William Crane, hackney-coachman, and one of the witnesses on the late Trial of Charles Random De Berenger, and others, for a Conspiracy, informed him, this deponent, that in his evidence given before the Stock Exchange Committee, he said that the person whom he took from a post-chaise-and-four, at the Marsh-gate, on the 21st of February, was no other than Lord Cochrane himself; and this deponent saith, that on his interrogating the said William Crane as to the person of his Lordship, he, William Crane, said he knew him as well as him, this deponent, and that he had driven Lord Cochrane from the Opera-house, and other places of amusement, twenty times; and further declared, that it was Lord Cochrane whom he took from the post-chaise-and-four aforesaid, and described his Lordship as a tall man, taller than him this deponent, with a long face and red whiskers. And this deponent further saith, that after the Trial of the persons aforesaid, he, deponent, having met the said William Crane, accused him of perjury, in having sworn to the person of De Berenger as the man taken up by him from the chaise at the Marsh-gate, when he had previously declared before the Stock Exchange Committee, that Lord Cochrane was the person; and told him, Crane, that he should be careful how he took an oath on such occasions; upon which the said William Crane refused to converse with him, this deponent, on the subject. And this deponent lastly saith, that having again on the same day met the said William Crane, he inquired if he had received the reward offered by the Stock Exchange Committee? when he, the said William Crane,

APPENDIX.—No. VII.

admitted he had received a part, and that he expected more.

JAMES YEOWELL.

Sworn before me, at the Mansion-house,

this 9th day of August, 1814,

WM. DOMVILLE, Mayor.

London, (to wit.) } JAMES LOVEMORE, of Clement's-lane,
Lombard-street, in the City of London, maketh oath and saith, That a few days after the 21st of February last, William Crane, hackney-coachman, one of the witnesses on the late Trial of Charles Random De Berenger, and others, for a Conspiracy, informed him, this deponent, and others then present, that in his evidence given before the Stock Exchange Committee, he said, that the person whom he took from a post-chaise-and-four at the Marsh-gate, on the 21st of February last, was no other than Lord Cochrane himself; and this deponent saith, that on James Yeowell, a friend of his, interrogating Crane as to the person of his Lordship, he, William Crane, said, that he knew him as well as he did him, James Yeowell; and that he had driven Lord Cochrane from the Opera-house, and other places of amusement, twenty times; and further declared, that it was Lord Cochrane whom he drove from the post-chaise-and-four aforesaid, and described his Lordship as a tall man, taller than James Yeowell, with a long face and red whiskers.

JAMES LOVEMORE.*

Sworn before me, at the Mansion-house,

this 9th day of August, 1814,

WM. DOMVILLE, Mayor.

* If it were necessary to multiply affidavits, there are two other persons who could depose to the fact of Crane having asserted, that in his evidence before the Stock Exchange Committee, he declared that Lord Cochrane was the pretended Du Bourg: a circumstance which perhaps explains the following passage in the Report of that Committee:—"They are in possession of still further information on the subject, which it is considered proper not to disclose at present, and which they hope and expect will eventually crown their efforts with complete success."

APPENDIX.—No. VIII.

No. VIII.

ANSWER to an ANONYMOUS LETTER.

Since the Advertisement of the present Publication, I have received an Anonymous Letter, requesting me to explain the circumstance of De Berenger having breakfasted at my house on the morning of the 21st of February, after having called for a bason and water, and washed his face and hands. "These," says my correspondent, "are strong marks of intimacy, as none but a friend and ally would take such a liberty, or be admitted to so familiar an intercourse". He adds, that "a detail of the conversation at the breakfast-table may throw much light on the subject in question," and that "servants will babble, and walls have ears." I think I am not ignorant of the author of this letter, but he will probably collect whether I am or not, from the manner in which I shall reply to his communication.

That De Berenger asked for a bason and water, and that he also drank a dish of tea, at my house on the morning in question, I shall, in the first place, admit; my correspondent, on the other hand, admitting (which he does), that these *liberties* took place before my return home. And since the *washing* before the *breakfasting* appears, in his opinion, a stronger mark of intimacy than to have breakfasted without washing, and as I admit that the one did not take place in contemplation of the other, and that they are too distinct *Items of Charge*, I shall treat them accordingly; and first of the *washing*.

If I am not out in my conjecture, the gentleman from whom I received this Letter, has no reason to doubt that it was not till long after the morning in question, that I was informed that De Berenger had washed his face and hands at my house. The "True Bill" had been found, and the Prosecution was in a state of progress, before the circumstance came to my knowledge. It was, in fact, from my Solicitor, Mr. Parkinson, after he had examined the servants, that I first heard of the circumstance. He informed me that he had ascertained from one of the maid-servants, that on her going into the room to mend the fire, De Berenger asked her for a bason and water. This *suspicious* circumstance was entered in the Brief, and was probably one of the reasons why the Counsel did not chuse to examine the servants at the Trial. It might have

APPENDIX.—No. VIII.

come out that De Berenger had taken such a liberty, as (in the opinion of my correspondent) "none but a friend and ally would take." For my own part, however, I persisted in desiring that this identical servant, among others, might be examined. It was not that I imagined that if she could substantiate the *coat*, it would be sufficient to overturn the *bason*; but I really could not perceive by what possibility they could come into any hostile kind of contact. I rather think that, if my Counsel could have brought the bason of water (with all its appendages) fairly into Court, it would have had a very salutary effect. Mr. Gurney could have extracted no argument from the soap, pumped none from the bason, nor wrung any from the towel,* that might not have been turned to my advantage. The argument that De Berenger had seized the opportunity of my absence to wash off the filth of the Dover expedition; to free himself as much as possible from the effects and appearance of fatigue; to refresh and prepare himself for that part of the imposition which was to be practised upon me; to present himself before me as if fresh from his lodgings; and with as much appearance of respect and decency, and as unsuspectingly as he could,† would have fairly beat out of Court every inference of intimacy that the *liberty* of asking for a bason of water, in my absence, and without my knowledge, could have suggested to the prosecuting Counsel. The washing paraphernalia, adroitly managed, would have enabled Mr. Serjeant Best to exercise his discretion, whether to leave Mr. Gurney in the *suds*, or give him a *wipe* with the towel.

The other accusation advanced by my anony-

* Whether the towel which De Berenger used on this occasion, was the same which he afterwards borrowed to wrap his green uniform in, I have not been able to ascertain; but if one might be allowed to suppose that the Lord Chief Justice had dived a little into the secret of the washing, it would "throw much light on the subject in question:" for if his Lordship had heard nothing of the washing, and had not even ascertained "the identity" of the towel, why should he have insinuated that there was *more* in the towel than the uniform; or have hinted at a double meaning, by putting *towel* in italics? (p. 485).

† That these were the true motives for the *washing*, is confirmed by the evidence of the servant, as entered in the Brief: "The officer asked to wash himself before Lord Cochrane's return." If these were De Berenger's own words, and they were taken down as such by my Solicitor from the mouth of the servant, it is clear that he was desirous of performing his ablutions unknown to me, and before he came into my presence.

APPENDIX.—No. VIII.

mous correspondent, that De Berenger breakfasted at my house on the occasion in question, is not literally true; but I was informed, after he had left the house, but not before, that in the interval of my absence, he had been offered and accepted a dish of tea. Now as taking a dish of tea, and "such a liberty as none but a friend or ally would take," appears, in the opinion of my correspondent, to be precisely the same thing, it behoves me to give a very particular account how this important event was brought about. It was then well known that I was in the expectation of going out almost immediately to America, in command of the *Tonnant*. And it will perhaps be admitted that officers, or gentlemen to recommend officers, or ask for passages to America, were daily coming to my house; and that, if I happened to be absent, which I generally was, principally on the subject of the Specification, or at the lamp manufactory, they were desired, if they chose to wait, to walk into the parlour, where they either wrote on the subject of their wishes, or remained as long as they thought fit in expectation of my return. Now the servants could not always distinguish between those whom I knew and those whom I did not know; but they were directed, or understood it to be their duty, to be civil to every one. And on the occasion in question, after the servant had supplied De Berenger with a bason and water, in compliance with his request, and noticed his sword or military cap, she represented to the house-keeper, that the gentleman in the parlour had asked to wash himself, and appeared to be an officer. From these two circumstances it was conjectured that he was a gentleman of my acquaintance, and as it was not then later than 10 o'clock, that he possibly had not breakfasted, and that if I had been at home, I should probably have asked him whether he had or not. And under these impressions, it was thought no breach of good manners towards him, or of duty towards me, to put that question in my absence; and he was told at the same time, that the things were on the breakfast-table; to which he replied, that he had breakfasted; but, as the things were on the table, he would take a dish of tea. It may perhaps be perilous to proceed; but as I am *candidly* called upon by my correspondent to "detail the conversation" which passed in my absence, it would be exceedingly disingenuous to suppress the most substantial part of it. The truth is, then, as I am informed, that, while he was sipping the

APPENDIX.—No. VIII.

The further question was asked, whether he would give any toast? to which he replied, according to the best information I can collect, "No, I am much obliged to you."

This is a correct "detail of the conversation at the breakfast-table," to the best of my information and belief; and it is not my fault, if it does not "throw much light on the subject in question," according to the expectation of my correspondent, who, with great seeming gravity, but no doubt with much latent waggery, insinuates that the females in the house were very deep in the plot; or that De Berenger let them into the secret, by way of chit-chat, "at the breakfast-table."

I must not omit to mention, that I have further ascertained, that De Berenger took the additional "liberty" of looking at the pictures which were hanging against the walls; and that he then made an observation or two, supposed to have been complimentary to the said pictures: but the language of those observations has not been so intelligibly reported to me, as to enable me to enter into "detail" with any degree of confidence, notwithstanding that "servants will babble." But as "walls have ears," and as it was that part of the conversation which was addressed to the pictures, that was most likely to be overheard by the walls, I refer my anonymous correspondent to them for further satisfaction: advising him to leave *no stone unturned* in pursuit of the investigation, which may possibly "throw much light on the subject in question."

It is not quite fair to infer familiarity from liberties taken when one is absent. What would my correspondent have thought had he happened to have been present when Mr. Hugh Campbell, an officer of the navy, ordered breakfast at my house, at near one o'clock in the day, (about a month after the visit of De Berenger) and called for cold meat and eggs? Would he not have imagined that Mr. Hugh Campbell and myself were upon terms of great familiarity? Yet at that time I had never seen, nor ever heard of the gentleman in my life. He came about 11 o'clock, and expressed his surprise at not finding me at home to receive him; and after waiting nearly two hours, he ordered breakfast; and his request was complied with, although he was wholly unknown to every person in my house: and it is no less true, that De Berenger was equally unknown to every person therein.* After

* With the exception only of Davis, one of the men-servants, who had seen him before.

APPENDIX.—No. VIII.

Mr. Campbell had made a very hearty breakfast, he wrote a note in the parlour, informing me, that in pursuance of an invitation to breakfast, he had attended for that purpose; but not finding me at home, he concluded that I had forgotten the engagement, and had therefore taken the liberty to order breakfast for himself. Having read this note, and knowing nothing of the writer, and understanding from the servant that he had actually breakfasted at my house, I concluded that he was some audacious swindler, and directed the servant to see if any thing had been stolen. This was the occurrence to which the lines related, that were expunged from the Brief by my direction. The servant had momentarily confounded the two visits of De Berenger and Mr. Campbell, and informed my Solicitor that I had described De Berenger as a swindler, and suspected that he had stolen something. I have since discovered which was the swindler, and which was the honest man. Mr. Campbell had really been imposed upon. He had defended my character with great warmth at a coffee-house, against the imputation cast upon it; and shortly afterwards he received a letter (which he has since discovered was forged by some wag, who was present on the occasion), purporting to come from me, stating that I had heard of his zeal, and inviting him to breakfast. A day or two after this occurrence, he completely removed the unfounded prejudice I had conceived against him, and presented me with a letter of introduction from Lady Heron Maxwell.

COCHRANE.

89097317739



B89097317739A